OVERSIGHT OF THE DEPARTMENT OF LABOR'S EFFORTS AGAINST LABOR RACKETEERING

HEARING

BEFORE THE

SUBCOMMITTEE ON HUMAN RESOURCES AND INTERGOVERNMENTAL RELATIONS

OF THE

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

SECOND SESSION

JULY 11, 1996

Printed for the use of the Committee on Government Reform and Oversight

U.S. GOVERNMENT PRINTING OFFICE

44-025 WASHINGTON : 1997

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402
ISBN 0-16-055942-1

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

WILLIAM F. CLINGER, JR., Pennsylvania, *Chairman*

BENJAMIN A. GILMAN, New York
DAN BURTON, Indiana
J. DENNIS HASTERT, Illinois
CONSTANCE A. MORELLA, Maryland
CHRISTOPHER SHAYS, Connecticut
STEVEN SCHIFF, New Mexico
ILEANA ROS-LEHTINEN, Florida
WILLIAM H. ZELIFF, JR., New Hampshire
JOHN M. McHUGH, New York
STEPHEN HORN, California
JOHN L. MICA, Florida
PETER BLUTE, Massachusetts
THOMAS M. DAVIS, Virginia
DAVID M. McINTOSH, Indiana
RANDY TATE, Washington
DICK CHRYSLER, Michigan
GIL GUTKNECHT, Minnesota
MARK E. SOUDER, Indiana
WILLIAM J. MARTINI, New Jersey
JOE SCARBOROUGH, Florida
JOHN B. SHADEGG, Arizona
MICHAEL PATRICK FLANAGAN, Illinois
CHARLES F. BASS, New Hampshire
STEVEN C. LaTOURETTE, Ohio
MARSHALL "MARK" SANFORD, South Carolina
ROBERT L. EHRLICH, JR., Maryland

CARDISS COLLINS, Illinois
HENRY A. WAXMAN, California
TOM LANTOS, California
ROBERT E. WISE, JR., West Virginia
MAJOR R. OWENS, New York
EDOLPHUS TOWNS, New York
JOHN M. SPRATT, JR., South Carolina
LOUISE McINTOSH SLAUGHTER, New York
PAUL E. KANJORSKI, Pennsylvania
GARY A. CONDIT, California
COLLIN C. PETERSON, Minnesota
KAREN L. THURMAN, Florida
CAROLYN B. MALONEY, New York
THOMAS M. BARRETT, Wisconsin
BARBARA-ROSE COLLINS, Michigan
ELEANOR HOLMES NORTON, District of Columbia
JAMES P. MORAN, Virginia
GENE GREEN, Texas
CARRIE P. MEEK, Florida
CHAKA FATTAH, Pennsylvania
BILL BREWSTER, Oklahoma
TIM HOLDEN, Pennsylvania
ELIJAH CUMMINGS, Maryland

BERNARD SANDERS, Vermont (Independent)

JAMES L. CLARKE, *Staff Director*
KEVIN SABO, *General Counsel*
JUDITH McCOY, *Chief Clerk*
BUD MYERS, *Minority Staff Director*

SUBCOMMITTEE ON HUMAN RESOURCES AND INTERGOVERNMENTAL RELATIONS

CHRISTOPHER SHAYS, Connecticut, *Chairman*

MARK E. SOUDER, Indiana
STEVEN SCHIFF, New Mexico
CONSTANCE A. MORELLA, Maryland
THOMAS M. DAVIS, Virginia
DICK CHRYSLER, Michigan
WILLIAM J. MARTINI, New Jersey
JOE SCARBOROUGH, Florida
MARSHALL "MARK" SANFORD, South Carolina

EDOLPHUS TOWNS, New York
TOM LANTOS, California
BERNARD SANDERS, Vermont (Ind.)
THOMAS M. BARRETT, Wisconsin
GENE GREEN, Texas
CHAKA FATTAH, Pennsylvania
HENRY A. WAXMAN, California

EX OFFICIO

WILLIAM F. CLINGER, JR., Pennsylvania
CARDISS COLLINS, Illinois

LAWRENCE J. HALLORAN, *Staff Director and Counsel*
ROBERT NEWMAN, *Professional Staff Member*
THOMAS M. COSTA, *Clerk*
CHERYL PHELPS, *Minority Professional Staff Member*

CONTENTS

OVERSIGHT OF THE DEPARTMENT OF LABOR'S EFFORTS AGAINST LABOR RACKETEERING

THURSDAY, JULY 11, 1996

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON HUMAN RESOURCES AND
INTERGOVERNMENTAL RELATIONS,
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
Washington, DC.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2154, Rayburn House Office Building, Hon. Christopher Shays (chairman of the subcommittee) presiding.

Present: Representatives Shays, Souder, Schiff, Morella, Chrysler, Martini, Towns, Lantos, Green, Sanders, Barrett, Fattah, and Waxman.

Present ex officio: Representative Collins of Illinois.

Staff present: Lawrence J. Halloran, staff director and counsel; Doris F. Jacobs, associate counsel; Robert Newman, professional staff member; Thomas M. Costa, clerk; Ronald Stroman, minority deputy staff director; and Cheryl Phelps, minority professional staff member.

Mr. SHAYS. I would like to call this hearing to order. Today, despite the recommendations of a Presidential commission more than 10 years ago, despite the work of the Labor Secretary's 1989 Task Force on Enforcement, despite the reports in 1990 and subsequent years of material weaknesses in Department of Labor [DOL], criminal enforcement efforts, and despite more than 5 years of in-depth enforcement by the inspector general [IG], DOL enforcement activities, according to the IG, "remain inconsistent and uncoordinated with no integrated approach to common criminal enforcement issues."

Why is an integrated approach essential? Because the only effective weapon against organized crime is equally organized enforcement.

Separate agencies within DOL enforce laws that protect the rights of union members and the solvency of union funds.

The Office of Labor-Management Standards [OLMS] enforces both civil and criminal provisions of the Labor-Management Reporting and Disclosure Act dealing with union elections and the handling of union funds.

The Pension and Welfare Benefits Administration [PWBA] enforces both civil and criminal protections found in the Employee

Retirement Income Security Act [ERISA] dealing with pension and health plans.

The Solicitor of Labor provides legal advice to both offices on civil enforcement issues that can have a significant impact on criminal cases.

Each of these offices is quick to point out that only the Inspector General is specifically charged with the authority to investigate allegations involving racketeering and organized crime.

And that is as it should be: an independent enforcer free of parochial and political pressures is an essential element of an effective antiracketeering effort.

But independence should not mean isolation. The IG needs PWBA information and expertise to decode complex ERISA transactions. The IG needs access to standardized civil and criminal case information to discern the patterns of embezzlement, fraud and extortion that are the telltale signs of racketeering.

When it comes to organized crime in unions, the jurisdiction and responsibilities of all these entities intersect. Each needs the other to be sufficiently focused on racketeering if pervasive and persistent union corruption is to be met with coordinated and consistent corrective enforcement.

Still, the Department continues to resist repeated calls to integrate and coordinate its criminal and civil enforcement efforts to provide a sharper focus on labor racketeering. As a result, the Department appears to remain an inattentive, at times unwilling, partner in the fight against organized crime in labor unions.

That resistance is documented on virtually every page of the Department's February 1996 response to the IG's final status report issued in March 1995, on efforts to improve Departmental criminal enforcement programs.

In a general disclaimer, the Deputy Secretary of Labor notes, "The task of developing coordinated Departments criminal enforcement is complicated by the numerous statutory mandates and budgetary limitations of the various agencies, as well as the objectives and cultures of each of the agencies." In other words: bureaucratic turf prevents a more unified, effective assault on labor rackets.

The Department then specifically dismisses, diminishes, or defines away key IG recommendations to improve enforcement and make DOL a more effective partner in the fight against labor racketeering. Calls for a uniform case information, departmentwide outcome tracking, consistent information sharing, and cross-agency training cooperation are pronounced too difficult, too complicated, too time-consuming, too costly, not feasible, unnecessary, impractical or secondary to the unique mission of each enforcement agency. Again, in a word, "turf." I guess that is kind of an understatement.

So today we ask: What will it take to overcome the legal, political and bureaucratic barriers that still prevent this Department of Labor from playing an effective role in the detection of labor racketeering and the protection of union members' rights and funds from exploitation by organized crime?

To the union workers whose trust is violated or whose pensions are plundered, that question is about much more than bureaucratic

turf or boxes on an organizational chart. The most recent semi-annual reports of the Labor IG describe the very real and very harsh costs exacted by organized union corruption.

Workers in one local are being "taxed" $1 per hour by the union to replenish their looted training fund. Construction costs increase and construction wages decrease, when immigrant labor is smuggled in onto a site. Fraudulent health plans and bogus unions rob unsuspecting beneficiaries of the medical and pension benefits they had every reason to believe would be there when they needed them.

More consistent, coordinated, and focused enforcement by the DOL agencies standing guard over the rights and funds of union members would deter organized labor corruption, reduce fund losses, and thwart newly emerging racketeering schemes. Today we ask how the Department plans to meet those goals.

Finally, let me be clear that our focus is the Department of Labor. Internal union practices also have an important role to play in protecting union members; but that is not our topic today. The Judiciary Committee is investigating the scope and efficacy of the Justice Department policy on consent decrees dealing with internal union integrity.

Our concern today is the efficacy and adequacy of forces external to union operations, specifically the enforcement of laws by the Department of Labor, laws that Congress put in place to protect unions, union members, and the American marketplace from the corrupting influence of organized crime.

We welcome all our witnesses today and we look forward to their testimony. At this time, I would ask the ranking member of the full committee if she would have a statement. Mrs. Collins.

Mrs. COLLINS of Illinois. I would, Mr. Chairman, and I thank you very much for allowing me to do so. Labor racketeering is a problem and the Departments of Labor and Justice must continue to vigorously prosecute any criminal conduct in this area.

Unfortunately, the motivation for today's hearing does not stem from legitimate concerns about the enforcement efforts of the Justice and Labor Departments. Instead, this hearing is part of a coordinated House Republican leadership effort to use the oversight authority of the Government Reform and Oversight Committee and the Judiciary Committee to attack organized labor for its financial support of Democrats.

On Wednesday, June 5, the day before this subcommittee notified committee members that a hearing would be held on labor racketeering, the Hill newspaper had an article that was entitled "GOP Plans Hearing on Labor Unions' Ties to Mob."

Paragraph three of the article discussed hearings planned by the Judiciary Committee and stated, and I am quoting now, "The proposed hearings are to date the most intense attack on labor unions by the House GOP leadership and are part of an effort to criticize unions that began in earnest after the AFL–CIO pledged earlier this year to spend $35 million helping Democrats try to recapture control of the House in this fall's election."

The coordinated nature of this attack is further evidenced by a memorandum dated May 8, 1996, from the staff of House Republican conference chairman, John Boehner, which states on page 1,

and now I'm quoting again, "It appears that the Clinton Justice Department has not been as diligent in pursuing allegations of mob influence in these unions." On page 4 he states further, "Getting the U.S. Department of Labor engaged to investigate these allegations has so far been met with resistance."

In addition to this memorandum, Representative Boehner issues a weekly newsletter attacking organized labor with such extremist headlines as, "Clinton's Friends in the Mob."

Prior to the Boehner memo, Representatives Bob Walker and Jim Nussle sent a memo on April 23 to all House full and subcommittee chairmen and women, or woman, requiring them to forward to the Republican House leadership information that could be embarrassing to the Clinton administration. One of the categories of information specifically requested by the Republican leadership was information involving "influence of Washington labor union bosses/corruption."

Mr. Chairman, based on these facts, I am concerned and convinced that the House Republican leadership has already dictated the subcommittee's conclusions about the effectiveness of the Departments of Labor and Justice to prosecute labor corruption. If the Republican leadership wants to campaign against organized labor, they have every right to do so, but they do not have the right to mask a blatantly political campaign as legitimate congressional oversight.

In addition to the political considerations surrounding this hearing, it is important for Members of Congress to recognize that cuts in Federal spending at the Department of Labor mean less resources for most Federal programs, including resources to investigate and prosecute criminal racketeering cases.

For example, the Office of Labor-Management Standards at the Department of Labor is responsible for conducting criminal and civil investigations under the Labor Management Reporting and Disclosure Act of 1959. That law was enacted by Congress primarily to insure basic standards of democracy and fiscal responsibility in labor organizations and private industry. In fiscal year 1985, the Office of Labor-Management Standards had 425 full-time employees; in fiscal year 1995, that same office was reduced to only 299 full-time employees.

So any comparisons of the productivity of that office during the last 10 years must take into account the damaging personnel cuts which that office has been forced to sustain.

Mr. Chairman, I am also puzzled by your interest in comparing the administration's current antiracketeering strategies with the recommendations of President Reagan's 1985 Commission on Organized Crime. To the extent that any of those recommendations have not been implemented, they have not been implemented by President Reagan, by President Bush, and now by President Clinton. Now, that suggests to me that there is a bipartisan consensus that some of those recommendations are flawed.

So, in conclusion, let me say that the use of a congressional committee as a forum for the Republican leadership to punish their political enemies is an unmitigated abuse of the oversight process. While I am convinced that this hearing has been ordered by the Republican leadership, it is within the power of the members of

this subcommittee to conduct a legitimate oversight hearing and not a kangaroo court.

So I would urge my colleagues to rise above the mud-slinging and to focus on the real enforcement issues at the Department of Labor and the Department of Justice. And I thank you for your time and yield back my time that is remaining, any time I may have.

Mr. SHAYS. Before calling on my colleague on the other side, first I would just let the ranking member know a few things. First, I do take exception with her questioning my motives, and I just want her to know that. Second, I find that the second part of her statement is very valid.

And I would say to you, just so you know, that I was asked not to have this hearing by the Judiciary Committee and by my leadership, and I decided to have this hearing. They felt that this hearing would take away from the focus of the other hearing. So this hearing is being held because I insisted that it be held, not because they requested me to. And that is the truth.

Mrs. COLLINS of Illinois. Well, if the gentleman wouldn't mind yielding me a minute or two.

Mr. SHAYS. Yes, I would be happy to.

Mrs. COLLINS of Illinois. Perhaps that is the case, but everything that I have stated in my statement is absolutely the case. You cannot deny that those memos have been sent by Boehner and by the Republican leadership, by Nussle and by Bob Walker, as well as those memos said specifically to try to find something that would be damaging to President Clinton. You cannot deny that fact, and I do not back away from my words.

Mr. SHAYS. No; I am just taking exception to your comment that the motivation of the hearing, since I am the one who called it, is for any reason other than to look at what the IG has said.

And, frankly, we don't know what the outcome will be. The outcome of this hearing may show, in fact, that there was no valid reason to hold this hearing or it may show there was. And that is the purpose of the hearing. And I just want you to know that.

Mrs. COLLINS of Illinois. Well, I thank you, but I haven't been convinced. But we are each entitled to our opinions.

Mr. SHAYS. Let me call on Mr. Souder.

Mrs. COLLINS of Illinois. And I thank you.

Mr. SHAYS. Mr. Souder.

Mr. SOUDER. I came with mixed motives because I, too, have read some of the press reports. But I looked at the testimony that we have, did not see that type of motivation coming through in the testimony, the questions, the background information. But I have other information and, if we are going to be partisan, I will be partisan at the hearing. And I am reluctant to go this direction. But I don't have an opening statement. I yield back.

Mr. SHAYS. Thank you. Mr. Lantos.

Mr. LANTOS. Thank you very much, Mr. Chairman. I speak more in sorrow than in anger. Some of the most rewarding and productive months and hearings I spent as a Member of Congress was in partnership with you when we investigated wrongdoing in the Department of Housing and Urban Development, which resulted in a

series of indictments and a series of individuals going to Federal prison.

And as you recall, those hearings invariably were totally bipartisan. As I recall, our votes were almost invariably, Mr. Chairman, unanimous. And Congress was, in fact, functioning at its very best: an oversight committee ferreting out wrongdoing in Government on a bipartisan, collegial, and civilized basis.

Now, as you well know, I have the highest personal regard for you and consider you a personal friend. Leaving the question of motivation aside, because I accept your comment on that issue, I would like publicly to associate myself with the eloquent and powerful statement of my dear friend and distinguished colleague, Congresswoman Cardiss Collins. Her statement, I thought, was superb and it focused the issue as it needs to be focused.

In the fact of a rejuvenated labor movement which is determined to get into the political arena with redoubled efforts, there has been a publicly documented attempt by partisan political leadership to strike back. And it is self-evident that this hearing, however motivated by you in terms of its timing and calling, this hearing is part and parcel of a nationwide attempt to malign one of the great forces in American society which, over the course of many generations, long preceding anybody's political existence on this panel or in this Congress, fought for the working men and women of this Nation in eliminating sweatshop conditions, in providing minimum wages, against child labor, vacations, pensions, you name it.

There is no segment of American society which, in a historical context, deserves more recognition, praise, and respect than the American labor movement, despite the vituperative and vicious statements emanating from some Members of this body against it.

So I must say that my distinguished colleague, Congresswoman Collins, was quite correct. She and I and all of us, I am sure, on both sides of the aisle are dead set against criminal influences and lawbreaking in any segment of American society. This hearing is not about that issue at all. It is part and parcel of the Walker memo attempting to dredge up whatever negative can be dredged up and laid before the American public a few months before the election.

One would have to have the naive innocence of a 1-year-old not to see that whether you are knowingly or unwittingly part and parcel of this effort, Mr. Chairman, that is what this hearing is all about.

I find it remarkable that on the very morning the paper shows what I believe is the highest fine ever levied on a corporate manager, a $6 million fine for violating the campaign finance laws through contributions to the Dole campaign, of which Senator Dole was totally ignorant and utterly innocent of, we should now be trying to dredge up anecdotal evidence of wrongdoing in the American labor movement. Goodness knows there is plenty of anecdotal evidence of wrongdoing in the Congress of the United States, in the executive branch under both Republican and Democratic administrations, in the business community, in academia, in the clergy, and in the American labor movement.

We are not going to learn much. The hearing will proceed. We will all shake our heads in horror at the wrongdoing. And then we

will go our separate ways, some on the other side hell-bent on destroying this great positive force in American society. And those of us who have admired and supported and applauded the efforts of the American labor movement to strike a blow for American working men and women will continue our support of that movement.

I yield back the balance of my time.

Mr. SHAYS. Tom, I just have to say to you that I have sorrow and anger as well, that I learned that we have bipartisan——

Mr. WAXMAN. Point of order, Mr. Chairman. Are we going to have a debate with every one of the comments and the chairman will respond to it?

Mr. SHAYS. No.

Mr. WAXMAN. Or are we doing opening statements, because some of us have conflicts and we have to be at a number of places.

Mr. SHAYS. It's just that when people refer to the chairman, and I am the one who called this hearing, I would like to be able to respond to them. I will be happy to wait until the end.

Let me just say that in this committee I haven't used the 5-minute rule. In this committee I allowed Mr. Lantos to go over it. I don't play games in this committee.

Mr. SOUDER. I have a parliamentary inquiry. At some point is there strike the word when motives of members are attacked?

Mr. SHAYS. Well, there would be in some committees, but not in this one.

Mr. Chrysler.

Mr. CHRYSLER. I don't really have an opening statement, but it certainly seems to me that when the AFL–CIO is increasing union dues on their members by 36 percent in order to raise an additional $35 million to add to the $40 million they spend anyhow so they can have $75 million to buy back control of this Congress, at a time like this, I think these hearings are appropriate.

And I worry that sometimes we have a little bit of the fox guarding the henhouse in this particular oversight. And I am very interested in these hearings and the outcome of them.

Mr. SHAYS. Thank you. The gentleman from Vermont.

Mr. SANDERS. Thank you very much, Mr. Chairman. I apologize for coming in a little bit late and find myself in very strong agreement from the statements made by Mrs. Collins and Mr. Lantos. I don't know, for the record, if the memo that Bob Walker and Jim Nussle sent out on April 23 was, in fact, read in full. But I think it should be so we can put this meeting in a context.

And this is the way it goes: "To all House Full and Subcommittee Chairmen from Bob Walker and Jim Nussle; Subject, Request for Information." Capitalized, urgent, the world is coming to an end. "Urgent. Date: April 23, 1996. On behalf of the House leadership we have been asked to call all committee for information that you already have on three subjects listed below. We are compiling information for packaging, for packaging and presentation to the leadership for determining the agenda. You are a tremendous source for this project.

"The subjects are: first, waste, fraud, and abuse in the Clinton administration; second, influence of Washington labor union bosses/corruption; third, examples of dishonesty or ethical lapses in the Clinton administration. Please have your staff review pertinent

GAO reports, IG reports, or committee investigative materials or newspaper articles for departments and agencies within your jurisdiction that expose anecdotes that amplify these areas. Send your material to so-forth and so-on."

That, in my view, is the context of what we are seeing here today. I would just say a couple of things. My friend who spoke a moment ago—I believe that was Mr. Chrysler—talked about how the unions are wanting to buy back the Congress. I think that was your phrase, was it not?

The gentleman should know that corporate America spends many, many, many times more than do the working people of this country in the political process. And the gentleman should know that the scandal of politics in this country is that, to an enormous degree, big money interest, corporations, wealthy people, outspend the working people of this country many, many times which, in my view, is one of the reasons we end up with the type of Congress we have today.

Mr. CHRYSLER. Would the gentleman yield?

Mr. SANDERS. Not right now. What this whole issue is about is the following: every person up here understands and knows what is happening to the middle class and the working class of this country. We know that 20 years ago the American workers were the best paid, had the highest standard of living in the industrialized world. Today, we are in 13th place.

We know that for the working people of this country there has been a 15-percent decline in real wages over the last 20 years. We know that right now the gap between the rich and the poor in the United States is wider than in any other industrialized nation on earth; that the richest 1 percent own 40 percent of the wealth of this Nation, more than the entire—more than the bottom 90 percent; that the middle class is shrinking, that people can't afford health care, they can't afford education, that workers are now working 160 hours a year more than was the case 20 years ago; that many of the new jobs that have been created pay $5 an hour, $5.50 an hour, without benefits. That is the reality facing the American working people.

And what we also know, if there is any force in American society that can perhaps turn this about, that can organize people, that can bring people together to stand up to the handful of multinational corporations that control much of the economic and political life of this country, it is the labor movement of America. That is the reality.

And we know what this hearing is about and we know what much of what is taking place in Congress in the last few months is about. And that is to do everything that can be done to weaken, and perhaps destroy, the ability of working people to come together to stand for their rights, to stand for justice, and to protect not only organized workers but all American workers.

Now, I would suggest, Mr. Chairman, that every Member up here—Democrat, Republican, Independent—is concerned about corruption in any aspect of our society. But I find it very interesting that just yesterday, for example, in my local newspaper, here is the story. "Prudential approves record fine. Prudential apologized to

policyholders Tuesday as it agreed to pay a record $35 million in fines."

This is a book which I am going to give you, Mr. Chairman. It is called, "Corporate Crime and Violence," by Russell MacIver. And I will quote from John Conyers, the former chair of this committee, who is quoted in the book. And he says, "For the first time, we have a book that documents the most egregious acts of the Nation's power elite. The author's 50-point program to combat corporate crime will help Congress develop appropriate legislation to rein in this abusive misbehavior."

I would suggest that maybe we also want to take a look—and I would hope that you will schedule hearings and I would be delighted to work with you—to talk about the enormous amount of corruption that is taking place in corporate America, the amount of deaths that take place all over America because of the irresponsibility of large corporations, and the degree to which corporations control the media in this country, not allowing people to hear what is going on. And on and on it goes.

So I will leave, for the record, Mr. Chairman, and would be delighted to work with you when the next hearing that we have deals with corporate crime and the problems associated with big money interest in this country. And I yield back the balance of my time.

Mr. SHAYS. I thank the gentleman. The gentleman from——

Mr. SOUDER. Could I ask a parliamentary inquiry?

Mr. SHAYS. Yes.

Mr. SOUDER. We don't have jurisdiction over commerce, do we?

Mr. SHAYS. No, we don't. The gentleman from New Jersey, Mr. Martini.

Mr. MARTINI. Thank you, Mr. Chairman, and I do have a short statement that I would ask unanimous consent to put into the record. And I simply want to share some comments and concerns.

Certainly the sentiment, I think, of all of us up here is wherever there is corruption, whether it is corruption in the business context or corruption in the labor context or corruption in public life, there is a duty on behalf of the appropriate inquiring body to take particular actions and make certain inquiries and ferret out that corruption.

And certainly this committee in the past, I know particularly in my own instance, there was one or two occasions where some particular potential wrongdoing was brought to my attention, and we brought it to this committee and we held some hearings. In one instance in particular, the hearing resulted in some positive initiatives and reforms that were enacted. And so the role of this oversight committee and reform committee is to do just that within its jurisdictional parameters.

And so today it is my hope that the focus of this particular body will be not so much—and certainly it's not, in my opinion—an attempt to malign organized labor, nor should it be. The effort here is to make some inquiries of the Department of Labor of their means and mechanisms to make inquiries.

If there is potential wrongdoing, wherever that may lay, and to see if the process can be improved on. And it is with that goal in mind that I am here at least to participate partially in this hearing today, but would not be if it was an attempt to do something else,

as suggested by some of my colleagues on the other side. I would not share that sentiment either.

And I think it is very important that the focus be to try to find ways to improve on the Department of Labor procedures and process and making investigations and finding out to improve the working men and women's plight and to make sure that labor is free of any undue influences and inappropriate influences, as the great body of labor is in this country.

And so whether the context is the business sense, the labor sense, or in public life, this body probably does not have jurisdiction over business or corporate in the private sector and, really, the inquiry today is to find out more from the Department of Labor in terms of their steps and procedures.

So with that in mind, I look forward to this hearing and hope and am confident that the chairman will keep the focus on that particular issue. Thank you very much.

Mr. SHAYS. I thank the gentleman. Mr. Waxman.

Mr. WAXMAN. Thank you, Mr. Chairman. Despite all your protestations, it is hard for me to see how this hearing isn't part of a political agenda when a memo is sent out by the House Republican leadership asking the staffs of all the committees and subcommittees to look for embarrassing subjects, to attack the Clinton administration and, particularly, specifically, influence of Washington labor union bosses/corruption. It is hard to see why this hearing shouldn't be looked at as anything other than a partisan misuse of taxpayers funds to advance the Republican agenda.

Mr. SHAYS. Would the gentleman yield?

Mr. WAXMAN. I will in a minute, but I want to make my statement first. Because we also ought to look not just at the context of this memo, but look at the history of this committee. I mean, this is the committee that brought in the National Council of Senior Citizens and beat them up unmercifully——

Mr. SHAYS. Excuse me, will the gentleman yield?

Mr. WAXMAN [continuing]. Because they dared——

Mr. SHAYS. The gentleman will yield, please.

Mr. WAXMAN. No, I do not yield.

Mr. SHAYS. Would the gentleman just say which committee? This committee did not do that.

Mr. WAXMAN. Just a minute.

Mr. SHAYS. Excuse me.

Mr. WAXMAN. It is my time, Mr. Chairman.

Mr. SHAYS. I object to your statement. I object.

Mr. WAXMAN. Mr. Chairman, I don't care if you object or not.

Mr. SHAYS. I just——

Mr. WAXMAN. My time is my time.

Mr. SHAYS. The gentleman will——

Mr. WAXMAN. I have a right as a Member of the minority——

Mr. SHAYS. The gentleman will suspend.

Mr. WAXMAN. And I am a member of this subcommittee.

Mr. SHAYS. The gentleman will suspend.

Mr. LANTOS. Regular order, Mr. Chairman.

Mr. SHAYS. Will the gentleman suspend for a moment? I just asked for a clarification. Do you mean this committee?

Mr. WAXMAN. Mr. Chairman, I will be glad to yield to you when I am finished and I will clarify anything that you want.

Mr. SHAYS. Thank you.

Mr. WAXMAN. And you can clarify anything you want. But this committee, the Government Reform Committee, has held hearings where they brought in the National Council of Senior Citizens and attacked them because they dared to oppose the Republican agenda on Medicare and Medicaid. This committee, the Government Reform so-called committee, used taxpayers' dollars to bring in a hooded official to talk about how he heard that the Environmental Protection Agency wanted some fact sheets circulated about different proposals that were going on with respect to the EPA legislation that the Republicans wanted.

It was this committee, or one of its subcommittees, where the head of the EPA was accused of criminal conduct simply because it released fact sheets critical of the Republican majority. They were not even critical. They spoke for themselves when the fact sheets came out about how thoughtless the Republican majority's legislation was. And we had that spectacle of the hooded lobbyist on May 15 who testified he felt intimidated because he received EPA factsheets.

This is not easily going to be forgotten, Mr. Chairman, and we can't come to this hearing and say, well, this certainly isn't in any relationship one to the other. The Republican leadership asked for this kind of a hearing, this committee has a history of holding hearings where the judgments are made in advance, they are not serious factfinding missions. And I can't see how we can look at this hearing in any other way.

However, having said that, if you are looking at possibilities of any kind of corruption, well, that's legitimate and we want to work with you to stop it wherever it may be. And I want to yield to you, Mr. Chairman, because I think that it is naive to ask us to put all of these other facts out of the context of why this hearing is being held today. You asked me to yield, and I want to yield to you.

Mr. SHAYS. I thank the gentleman. First off, I want to ask the gentleman does he believe that I am holding this hearing for any other motive than to review the IG's report about the Department of Labor?

Mr. WAXMAN. Mr. Chairman, it is my belief when I look at the context of the memo from your leadership and the history of this committee, that there has to be a partisan Republican attack on labor in the subtext of this hearing. I hope I am wrong, but it doesn't seem to me that it is a mere coincidence that this hearing is being held in light of this clear memo from your leadership asking for hearings like this.

Mr. SHAYS. Well, Mr. Waxman——

Mr. LANTOS. Will the gentleman yield?

Mr. WAXMAN. I yield to the chairman first.

Mr. SHAYS. Well, Mr. Lantos, if you want to make a comment, I would be happy to have it. I mean, he has the floor.

Mr. LANTOS. Well, if I——

Mr. WAXMAN. I hope at some point we will finish our opening comments and hear from the witnesses, since we invited them to come. But I yield to Mr. Lantos.

Mr. SHAYS. This is important, since all the comments on your side have been on the motives of the hearing and I would like to explain to the gentleman——

Mr. WAXMAN. Well, Mr. Chairman, you know——

Mr. SHAYS. Will I have the chance to respond to your comments? Let me——

Mr. WAXMAN. Let me just say this, Mr. Chairman: We are in the minority. We have rights to make opening statements. We recognize that when we had a hearing the other day there were more Republicans and they got to make more statements than we were able to make. We didn't get an equalization of the time where the ranking Democrat or another Democrat could respond to every statement made on the Republican side. The rules of procedure say that you get to call the hearings because you are in the majority.

I believe these hearings are called for the purposes of advancing a political agenda. I may be wrong, but it seems to me that appears to be the case. Now, I get to make that statement in my 5 minutes and I don't think it's fair when you invite witnesses and you have a hearing to have a statement by the Democratic side and then a statement by the Republican side, and a statement by the Republican side and a statement by the Republican side.

Mr. SHAYS. Will the gentleman yield?

Mr. WAXMAN. We have more Democrats here. Call your Republicans in to make contrary statements.

Mr. SHAYS. Will the gentleman yield?

Mr. WAXMAN. I yield to you.

Mr. SHAYS. I answered the question because I thought the gentleman would want to know the answer. And I will make this point to you: When you talk about 5 minutes, you have had more than 5 minutes because this committee hasn't used——

Mr. WAXMAN. Let's keep the clock going. Let's be strict on the rules.

Mr. SHAYS. Mr. Waxman, maybe in your committee you do that. We have never had to. You haven't been to this committee that often. In this committee we have allowed the Members to participate fully without the 5-minute rule. If you want to come in and start using the 5-minute rule we could do that, but it hasn't been necessary. I have worked on a total bipartisan basis with the ranking member.

And all I want to say to the gentleman is that I took that memo and threw it into the wastepaper basket. I told my staff they were not to respond to it and I thought it was inappropriate. I scheduled the hearing on the Department of Labor to look at the IG report. My leadership heard that I had, we had a meeting and they asked me not to have this hearing. I persisted and we are having this hearing.

The gentleman may not believe me, which would trouble me, but that is the truth. And I would just make one last comment because I know Mr. Lantos would like a yield from you.

Mr. Lantos, we did work on a bipartisan basis. I was willing to go after my own party without thinking of what the repercussions were. And I have learned, sadly, that we have a bipartisan approach if I am willing to go after Republicans. But if I want to use the same standard with Democrats, then somehow it becomes a

partisan matter. What saddens me is that you would think that somehow this would be any different.

I thank both gentlemen. We will go to opening statements.

Mr. WAXMAN. Mr. Chairman——

Mr. SHAYS. I will not interrupt anyone any more. I apologize to the gentleman. I have never encountered this on this committee before and so maybe the next time I will just make sure the clock is running. So I do apologize to the gentleman.

Mr. WAXMAN. I thank you, Mr. Chairman. And the rules are the rules, and I think they ought to be followed. But I listened to your protestations. I think you are an honorable person; therefore, I am influenced by them. But I have to tell you the context in which this hearing is being held and the history of this committee and in light of this memo, I think we have to weigh the two. And we will see how the hearing goes and see if we can, in fact, work on a bipartisan basis.

Mr. LANTOS. Will the gentleman yield?

Mr. WAXMAN. Yes, I yield to the gentleman.

Mr. LANTOS. I thank my friend for yielding. Mr. Chairman, I again would like to reiterate my utmost personal regard for your integrity and honesty, and I want to set that issue aside. But you must admit listening to the opening observations of some of your colleagues on your side of the aisle where one of them, and I am quoting, is talking about labor attempting to buy back the Congress.

This implies several things. It implies, in the first place, that in 1993 the Congress was bought, bought, by the other side. You don't buy back things which hadn't been bought. This is not my observation. This was the comment of Mr. Chrysler.

I also think it is the most appalling and nauseating and disgusting and unfair observation to imply that the organization that represents the working men and women of this country is somehow doing something underhanded, unethical, illegal, by enhancing their participation in the political arena. The Russian elections had a larger turnout than we did. I hope to God the American labor movement will increase the participation of working men and women in the political arena. I hope to God they will be able to provide funding for individuals who reflect the concerns of working men and women and not just corporate, multi-national America.

I thank the gentleman for yielding.

Mr. SHAYS. The gentleman's time is expired. Mrs. Morella.

Mrs. MORELLA. Thank you. You know, maybe having raised nine kids I have learned you don't jump to conclusions. You have to really wait and listen to both sides and then make up your mind. I think that we have generated a lot of energy that we can generate when it comes to responding to what our witnesses say.

So, Mr. Chairman, I have always found you to be fair and I know that our colleagues on the other side have said the same thing, too. And I appreciate your efforts to call attention to the problem of labor racketeering.

I think it is totally appropriate that this committee on oversight be looking at what the IG says about that particular situation with the idea of learning and then translating what we learn into action if it is necessary.

Something that seems to be off the issue I will mention, and this is that next week as cochair of the Congressional Caucus for Women's Issues, we are going to be introducing our women's Economic Equity Act for improving the economic standing of American women and their families. It is going to be a package designed to respond to the changing needs of American society and promote equity for women in the workplace and at home.

And I mention this because this EEA is to highlight my interest in protecting the American worker from corruption in the workplace and because as we enter the new millennium, two-thirds of the new entrants into the labor market are going to be women and minorities, I think it is appropriate again that we look to this workplace and see who would be unduly impacted—everybody would be, certainly women—by racketeering and corrupt union officials.

So I look forward to hearing from our expert witnesses today and learning more about what the Department of Labor is doing to eliminate possible corruption in our Nation's labor unions. So, Mr. Chairman, I commend you and I hope that we can proceed and listen to our experts who will be testifying.

Incidentally, in the last hearing I only got 5 minutes. I wanted another round but we didn't have time. So it seemed to me it was pretty equal in terms of allocating time. I yield back.

Mr. SHAYS. Thank you. This hearing has no limit to how long it will go, and it may go longer than expected.

Mr. Barrett.

Mr. BARRETT. Thank you, Mr. Chairman. I think all of us came to Congress with different experiences. I was in the State legislature for 8 years and I spent a lot of my time there and running for Congress knocking on doors. I probably knocked on 70,000 doors. And there are few doors that stand out after you knock on 70,000 doors, but there is one that, to me, highlights some of the issues that are perhaps directly going to be touched on today or tangentially be touched on today, as much as one that I knocked on about 7 years ago in the summertime in Milwaukee.

And it was a middle class, lower middle class, neighborhood. And I was walking through the neighborhood and there was a fellow standing by the side of his house watering his lawn. And he was a voter. He wasn't an activist. He wasn't someone I had ever heard of before.

But I went up and started to chat with him and, like most politicians, wanted to talk about the weather, his garden, or something like that. And he started out by saying that his wife was inside crying. And I asked him what was wrong, and he said that he had just gotten a letter from his employer. And he had worked for this employer for 28 years. And it was a demand from his employer that he and the other members of his union accept a substantial pay cut within 2 weeks or they would all be fired.

And he talked about his wife crying and how hard it was, and said he just couldn't pay off his mortgage. He said, "All I want to do is get to retirement. All I want to do is support my family." Again, clearly, he was not an activist of any sort. And he said, "And they're just trying to break us. That's all they're doing. They're just trying to break us."

And I listened to him, and then he started crying. And it is a very uncomfortable feeling as you are standing there with a 55-year-old man who is crying because he wants to take care of his family and he wants to pay off his mortgage. And to me, as I listen to some of my colleagues talk today, I think that sometimes we miss the people in this debate.

Clearly, Democrats are allied with labor. Clearly, Republicans, as evidenced by some of the statements at least, can't stand labor and, somehow, organized labor is the scourge of the Earth. I personally believe, as some of my colleagues do, that without organized labor the income gap in this country, which I think is already a disgrace, would be even greater than it is today.

And so I think it is unfortunate that we set up this tension-filled atmosphere where you are either for labor or you hate labor. And, unfortunately, I was certainly persuaded that the reason for this hearing was because of that April memo.

And I think that even the chairman, who I have tremendous respect for, would agree that there was, at a minimum, a prima facie case made on the basis of that memo alone that would allow Democrats to conclude that the calling of this hearing is intertwined with that memo. I will, frankly, accept the chairman's statement that it is not intertwined, because I think he is an honorable man.

But, again, I think that we have to be careful in what we are doing. We can bash labor. I find it somewhat bizarre that people who do not like labor don't even want them to be involved in the political process when, as Mr. Sanders pointed out, the influence of corporate dollars in our political process far outweighs the influence of labor dollars.

And even looking at the chairman's opening statement where he talks about the different agencies that are responsible for protecting the rights of union members and the solvency of union funds, he refers first to the Office of Labor-Management Standards, which enforces both civil and criminal provisions of the Labor Management Reporting and Disclosure Act dealing with union elections and handling of union funds.

If this Congress were serious about having that agency perform its role adequately, I question why the President's request for $48.09 million for that agency would be cut down by this Congress to $46.5 million. Next he refers to the Pension and Welfare Benefits Administration, which enforces both civil and criminal protections found in the Employee Retirement Income Security Act dealing with pension and health plans. If we were serious about having that agency deal with these concerns, I question why the President's request for $85.4 million for this agency would be cut down to $65.7 million by this Congress.

He next mentions the Solicitor of Labor, which provides legal advice to both offices on civil enforcement issues that can have a significant impact on criminal cases. If we are serious about this agency performing its role, I question why the President's request for $67.7 million would be cut down to $57 million. Finally, he mentions the inspector general, which is specifically charged with the authority to investigate allegations involving racketeering and organized crime. If we are serious about this agency performing its

role, I question why the President's request for this agency was also cut.

If this Congress is serious about dealing with corruption in labor, why are we tying the hands of the agencies that are responsible for investigating this? And that is a question I will be interested in hearing the answer to today. I yield back the balance of my time.

Mr. SHAYS. I thank the gentleman. The gentleman from New Mexico.

Mr. SCHIFF. I'll pass.

Mr. SHAYS. Thank you. Mr. Fattah.

Mr. FATTAH. Thank you, Mr. Chairman, and I will be extraordinarily brief. But I first want to say that I totally accept your statements that this hearing is not part of any organized effort by the Republican leadership and I think that many Members on our side know you to be a very fair person.

I do want to state on the general subject of the matter at hand that there have been some generalized statements about corrupt labor unions emanating from the leadership of the Republican majority in the Congress. And it is of note to me that even though we may have a few Members of Congress from time to time who get in trouble, we don't want to consider ourselves, as a general statement, corrupt. Those are isolated cases.

If you look at the Wall Street Journal on almost any day you see businesses that have run afoul of the law and are involved in criminal activity, but we don't make generalized condemnations of corporate America. Just in the last 24 hours, one of the people intimately involved in raising money for the Dole Presidential campaign pleaded guilty in return for a jail sentence and a $6-million fine for illegal fundraising in the Dole campaign but no one, no rational person, would infer from that every single person raising money for the Dole campaign is somehow corrupt and involved in organized efforts to violate the Federal election law.

And so it is of concern that those of us in positions of power and influence in our Government would not be as careful in our descriptions of organizations that represent working people not to take isolated, anecdotal circumstances, however unfortunate they may be, and to try to apply that across the breadth and width of the labor movement across this country.

And I think that rhetoric, both on the floor of the House that we have heard and other circumstances, for example, the memo that came out, did give rise to some concern, at least on my part. It was never a concern on behalf of the chairman, who I believe has always been fair and appropriate in conducting hearings in this committee.

But, nonetheless, there has to be a response. And if it only comes from the Democratic party, so be it, but some people should stand up and say that it is wrong for people to make these kinds of generalizations and attacks on labor unions because of individual circumstances that have arisen from time to time.

So I thank the chairman.

Mr. SHAYS. I thank the gentleman. The gentleman from Texas, Mr. Green.

Mr. GREEN. Thank you, Mr. Chairman. And following both my colleague from Pennsylvania and from Wisconsin, I was late this

morning because I gave a 1-minute on the floor and I noticed a concerted effort, it seems like, and not only the memo from April 23 that was mentioned from Bob Walker and Jim Nussle to subcommittee chairmen, but I also serve on the Economic and Educational Opportunity Committee and we have a subcommittee of that committee who is doing basically the same thing. I know Judiciary has a subcommittee doing it.

And then when I see the information that somehow I get a copy of from the House Republican Conference on Washington union bosses and the Democratic party and things like that I, like my colleagues, Mr. Chairman, I have worked with you and, in fact, on lots of issues. But it just seems like when the evidence piles up and we see what is going on in other committees that—and this subcommittee calls a hearing that is being considered by also Judiciary and Education and Economic Opportunity Committee subcommittees, that it is a concerted effort.

But with that, I am proud to be a 27- or 28-year member of a union, although I have to admit in Texas we are a right-to-work State and I joined a much stronger union. I joined the State bar at one time because in Texas you can't practice law unless you are a member of the State bar. But I am appalled at anyone who would take and steal or divert pension funds, whether they be union membership or someone who is a pension manager for a company.

And we have the same problem other than union activities that nothing requires a union card to steal a pension. And we have seen that. And I would hope our next committee meeting, Mr. Chairman, would look at the raiding of pensions by people who don't have union cards or don't have leadership in organized labor but also look at the comparisons and see what is happening because I want to make sure if somebody is losing their pension rights, as Mr. Barrett talked about in the give-backs that he had from his constituent, that we have the ability to, in this committee, bring them to light and also go forward with it.

Again, the concern I had with this hearing was not on the original subcommittee calendar and came up later, but I am pleased that we have the people here from the Department of Labor because if the system is broke, we need to fix it and this is where it has happened. I just hope that it is not a vendetta that we may see happening.

Again, the evidence points in that direction but I hope this subcommittee is not falling down the same path that other subcommittees and, literally, today a 1-minuter on the floor of the House by a Republican colleague from North Carolina just fit right into everything that I am worried about, Mr. Chairman.

[The prepared statement of Hon. Gene Green follows:]

Statement of Representative Gene Green
Subcommittee on Human Resources and Intergovernmental Relations
July 11, 1996

Thank you, Mr. Chairman for the opportunity to speak at this hearing. In general, I believe it is worthwhile to find out what the Labor Department is doing to combat the influence of organized crime and the existence of racketeering in labor unions. After all, the stealing of money and the mismanagement of worker's pensions is a crime committed against those who have entrusted their union or employer to look out for their best interest. I hope we hold another hearing soon on raids on pensions by businesses and people who do not hold union cards.

But I know that this is not the only, nor even the primary reason why this hearing is taking place. All we have to do is go back to the April 23, 1996 memo sent by Reps. Bob Walker and Jim Nussle to Full and Subcommittee Chairman asking them to use their committee resources form the House leadership's agenda by looking for dirt on the Clinton Administration or the influence of "labor union bosses".

This hearing was not on the original Subcommittee calendar and seemed to be added because of the letter.

That being the case I am pleased that the today's panels appear to have been chosen for their expertise in the stated topic and not for their value in a photo opportunity.

I thank the Chairman.

Mr. SHAYS. I thank the gentleman. Mr. Towns, I think you get to close.

Mr. TOWNS. Thank you very much, Mr. Chairman. I welcome this important opportunity to assess the Department of Labor's efforts to combat racketeering and corruption in labor unions and employee benefits programs. There have been a lot of irresponsible charges that the Federal commitment to fight labor racketeering is insincere, that union leadership is captive to the mob, and that the Democratic party is captive to union leaders.

Mr. Chairman, let me commend you for convening this hearing so we can go on record with the facts. I thank you for calling as witnesses the Government officials responsible for carrying out the administration's labor antiracketeering initiatives. These are the experts and their testimony will provide us with some important and useful information.

Mr. Chairman, under your leadership, I am optimistic that this subcommittee can conduct a careful and balanced review of this difficult issue. You have demonstrated your fairness in the past so I have no need to question your motives today because you and I have worked very closely together over the years and, of course, when there is a difference we have met and we have talked about it, and you have always been honest and fair.

I must say that, and I want to make it very clear today more than ever. So I do not question your motives here this morning.

But please allow me to thank the witnesses for the work they have done on a day-to-day basis to confront the problems and for their preparation for today's hearing. I look forward to a candid and constructive discussion on the administration's objectives and achievements, as well as the problems which undermine the Department of Labor's efforts.

In that regard, seeing that the House is scheduled to vote on Labor appropriations today, I invite our witnesses to share how the enforcement and compliance budget of their respective programs have fared. I think that is important. I think we need to talk about things that can really make a difference.

If we are committed to bringing out change, we have to recognize that you have to have people, you have to have a budget that is in place that makes that kind of commitment. You know, I don't want to get involved here in a whole lot of wild rhetoric and I want to look at the real facts and make a decision in terms of what we need to do to bring about real change. And I think that is very, very significant.

So let me close on this note, Mr. Chairman, by saying to you that I have enjoyed working with you in the past and I really feel that where there was a problem you have openly shared it with me, whether I agreed or disagreed.

I want to let you know that I feel this morning that this is a hearing that is going to benefit in every way, and I don't question your motives at all. I want you to know. And I say that to you because I work very closely with you, probably closer than anybody sitting up here.

Thank you. I yield back.

Mr. SHAYS. I thank the gentleman. The statement meant a great deal to me and I truly do thank him. If we could deal with some housekeeping first.

I ask unanimous consent that all members of the subcommittee be permitted to place an opening statement in the record and that the record remain open for 3 days for that purpose. And without objection, so ordered.

I also ask unanimous consent that our witnesses be permitted to include their written statements in the record. And without objection, so ordered.

As is our custom, we swear in our witnesses and I would ask all of you to stand up so I can administer the oath.

[Witnesses sworn.]

Mr. SHAYS. For the record, all three have answered in the affirmative. Since I have not introduced our witnesses, let me do that now.

We have Charles Masten, inspector general, Office of the Inspector General, Department of Labor, accompanied by Stephen Cossu, who is deputy assistant inspector general for labor racketeering, Office of the Inspector General.

I am assuming, Mr. Masten, you will be giving the statement.

Mr. MASTEN. That is correct, Chairman Shays. I have the deputy here just in case some question comes up concerning his experience in this specific area.

Mr. SHAYS. Because he might know a little more than you?

Mr. MASTEN. Right, and can give you more detail.

Mr. SHAYS. OK. And Mr. John Keeney, the acting assistant attorney general, Criminal Division, Department of Justice. It is very nice to have you here to help give us some perspective, and I thank you very much.

Mr. Masten.

STATEMENTS OF CHARLES C. MASTEN, INSPECTOR GENERAL, OFFICE OF THE INSPECTOR GENERAL, DEPARTMENT OF LABOR, ACCOMPANIED BY STEPHEN COSSU, DEPUTY ASSISTANT INSPECTOR GENERAL FOR LABOR RACKETEERING, OFFICE OF THE INSPECTOR GENERAL; AND JOHN KEENEY, ACTING ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, DEPARTMENT OF JUSTICE

Mr. MASTEN. Thank you. Good morning, Mr. Chairman and members of the subcommittee. You have invited me to discuss the efforts and accomplishments of the Office of the Inspector General in combating corruption in labor unions. As you stated, I am accompanied by Stephen Cossu, the deputy assistant inspector general for investigations. And I will summarize my fully prepared statement and ask that the full statement be included in the record.

Mr. Chairman, as you may be aware, there have been recent news accounts reporting criticisms of the Federal Government's progress in eradicating organized crime's influence over labor unions. I cannot speak for the entire Federal Government, nor can I speak for the entire Department of Labor; however, I can unequivocally say that the OIG, in conjunction with the Department of Justice has vigorously, and I believe successfully, pursued orga-

nized crime and labor racketeering since the OIG's establishment in 1978.

When the Inspectors General Act was passed in 1978, Congress recognized the need for an independent criminal labor racketeering investigative function which would be shielded from any possible political interference and would be separated from the Department's extensive regulatory and administrative functions in this area. This function was given to the OIG and we established a separate labor racketeering office.

In order to effectively manage our decrease in resources, as well as respond to the administration's reinvention initiatives, we have recently reorganized our Office of Investigations. Under this reorganization, our program fraud and labor racketeering divisions both report to the assistant inspector general for investigations and our field office structure is being similarly realigned.

I want to assure this subcommittee and all other interested parties that these changes are primarily designed to make the OIG's investigative functions more efficient and our commitment to labor racketeering investigation is, and will be, as strong as ever.

The Department of Labor continues to have general investigative authority under certain statutes and conducts civil and criminal investigations involving unions and employee benefit plans. Although there is some overlapping investigative authority, my experience since becoming the inspector general has been one of cooperation with the other components within the Department, including joint investigations in some cases.

Given this overlapping authority, there have been suggestions made within the Department that a full consolidation of its criminal enforcement functions be effectuated under the OIG umbrella or that the Department of Labor establish an overall enforcement unit apart from the OIG which would consolidate its criminal and civil enforcement functions affecting unions and benefit funds.

These suggestions have not gone very far. It is my opinion, as the IG, that if any sort of consolidation is attempted it will not result in increased or more efficient criminal enforcement of labor laws unless the component which has this function is independent from the regulatory branches of the Department and from any political influence within the Department. This is precisely why the OIG Labor Racketeering Office was established almost 20 years ago, and the same rationale is just as relevant today.

Over the years, the OIG has directed most of its attention to supporting the Department of Justice Organized Crime Strike Force's effort to target traditional organized crime figures engaged in classic labor racketeering violations such as embezzlement, bribery, and extortion. In addition, I would add that labor racketeering is not limited to unions and union officials. Our investigations over the past 10 years have resulted in almost as many indictments and convictions of management officials as union officials.

The 1986 PCOC report identified four international unions which were under the control of traditional or Cosa Nostra organized crime entities. Since this report was issued, 35 percent of the Division of Labor Racketeering cases have involved allegations of corruption in these four unions and the joint efforts of the OIG, FBI, and Department of Justice have led to each of these four unions

currently being operated under a court-monitored civil RICO decree, or an agreement, between the union and the Federal Government.

In turn, these agreements have led to the removal of corrupt officials and influences in these unions. While continued work and vigilance are needed, these agreements represent major steps in the fight against labor racketeering.

One of the most permanent changes in the labor racketeering landscape is the expansion from more traditional labor violations in the labor-management relations side of union affairs to the more complex area of employee benefit plans. Our investigations have uncovered many varied schemes involving health insurance fraud, fraudulent multiple employer welfare arrangements, and bogus union-sponsored insurance plans.

As a result, the Office of Inspector General has focused a significant amount of its resources into the employer-employee benefit plan arena. Our investigations have also disclosed that labor racketeering is not the exclusive province of the more traditional LCN crime families; rather, there are many other organized groups that have infiltrated the workplace. The nature of these nontraditional groups makes their removal much more difficult because there is limited intelligence on these groups and their membership. In addition, we have increased our emphasis on combating labor racketeering by conducting industry probes which examine the vulnerabilities existing within an industry, rather than focusing on a specific union.

Mr. Chairman, you asked the Office of Inspector General what our main concerns are with respect to the investigation of labor racketeering. Our office has an ongoing concern regarding the definition of its statutory authority which is based upon its participation in the Department of Justice Organized Crime Strike Force. We believe that a more direct and specific statutory definition of authority would permit the OIG to remain a completely flexible and responsive law enforcement agency, and I would recommend that Congress consider a statutory clarification of the OIG's labor racketeering investigative authority.

The current definition has caused the OIG to operate under a piecemeal set of agreements and memoranda of understanding with the FBI and the Department of Labor components. In my written statement, I have discussed several other legislative recommendations which the OIG believes will assist the Federal Government's anti-labor racketeering efforts.

Mr. Chairman, this concludes the summary of my statement. Mr. Cossu and I will answer your questions or any questions of the subcommittee. Thank you.

[The prepared statement of Mr. Masten follows:]

STATEMENT OF
CHARLES C. MASTEN
INSPECTOR GENERAL
U.S. DEPARTMENT OF LABOR
BEFORE THE SUBCOMMITTEE ON HUMAN RESOURCES ,
AND INTERGOVERNMENTAL RELATIONS
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT
U.S. HOUSE OF REPRESENTATIVES

July 11, 1996

Good Morning, Mr. Chairman and Members of the Subcommittee. As part of the Subcommittee's oversight of the Department of Labor's anti-labor racketeering efforts, you have invited me, in my capacity as the Inspector General, to discuss the efforts and accomplishments of the Office of Inspector General (OIG) in combatting corruption in labor unions. My remarks represent the views of the Office of Inspector General and do not necessarily represent the views of the Department of Labor (DOL).

I am accompanied this morning by Stephen Cossu, the Deputy Assistant Inspector General for Investigations. I will summarize my full statement and request that it be included in the hearing record. My written statement this morning complements my previous written responses to the questions posed in your June 14 letter, and I have attached a copy of these responses to my statement.

Mr. Chairman, as you may be aware, there have been recent news accounts reporting criticisms of the Federal Government's progress in eradicating organized crime's influence over labor unions. I cannot speak for the entire Federal Government, nor can I speak for the entire Department of Labor. However, I can unequivocally say that the OIG has vigorously, and I believe successfully, pursued organized crime and labor racketeering since the OIG's establishment in 1978. In addition, I would emphasize that labor racketeering is not limited to unions and union officials. Our investigations over the past ten years have resulted in almost as many indictments and convictions of management officials as union officials.

Our investigations have also disclosed that labor racketeering is not the exclusive province of the more traditional La Cosa Nostra (LCN) crime families. Rather, there are many other organized groups that have infiltrated the workplace. The nature of these groups makes their removal much more difficult because eliminating one or two individuals will not solve the problem. There are usually other members waiting to take their places. Therefore, in order to have any success in combatting organized crime, the Federal Government has had to employ a strategy of attempting to erode the foundations of organized crime's activities through comprehensive, multiple investigations resulting in convictions or other remedies that have a long-term, lasting impact.

OIG's Labor Racketeering Program

The OIG's labor racketeering program can be traced back to a period before the actual establishment of the OIG in 1978. In 1967, the Department of Justice (DOJ) created Organized Crime and Racketeering Strike Forces around the country in response to a Presidential initiative to combat organized crime. The Department of Labor was a participant in this initiative with respect to investigating labor law violations committed by organized criminals and racketeers. By the mid-1970s, however, the resources actually committed to the strike force efforts by DOL had dissipated so drastically that Congressional hearings were held to examine DOL's level of participation and commitment. After DOL was criticized by both the Department of Justice and the Congress for its failure to assign enough resources to fulfill its responsibilities, the Department of Labor responded by forming the Office of Special Investigations (OSI), a new component reporting directly to the Secretary.

When the Inspector General Act was passed in 1978, Congress recognized the need for an independent criminal labor racketeering investigative function, which would be shielded from any possible political interference and would be separated from the Department's extensive regulatory and administrative functions in this area. OSI's authority, which was still framed in terms of its participation in the DOJ Strike Forces, was transferred to the OIG, and the OIG established a separate labor racketeering office to carry out this authority. While all of the original federal IG offices have a component to conduct criminal investigations of agency programs and personnel, only the DOL Office of Inspector General has a component which has this sort of external criminal investigative authority.

In order to effectively manage our decreasing resources, as well as respond to the Administration's reinvention initiatives, we have recently reorganized our Office of Investigations. Under this reorganization, our program fraud and labor racketeering divisions both report to the Assistant Inspector General for Investigations, and our field office structure is being similarly realigned. I want to assure this Subcommittee and all other interested parties that these changes are primarily designed to make the OIG's investigative functions more efficient, and our commitment to labor racketeering investigations is, and will be, as strong as ever.

The Department of Labor continues to have general investigative authority for statutes such as the Labor Management Reporting and Disclosure Act (LMRDA) and the Employee Retirement Income Security Act (ERISA), in addition to all of its regulatory and administrative responsibilities relating to workers in general. Accordingly, the Department conducts civil and criminal investigations involving unions and employee benefit plans, and I understand that the Subcommittee will also be receiving testimony from Department representatives this morning.

As indicated in my response to your June 14 letter, the OIG has not done any recent oversight work with respect to the specific issue of the Department's efforts to combat

criminal activity in labor unions. However, the OIG has reviewed DOL's overall criminal enforcement efforts on several occasions. In June 1990, we issued a report on these efforts and in March 1995, we issued a fourth and final status report on this subject. This final status report concluded that DOL's overall criminal enforcement efforts, which include those of the Pension and Welfare Benefits Administration and the Office of Labor-Management Standards, remained inconsistent and uncoordinated, and these efforts lacked an integrated approach to common criminal enforcement issues such as case documentation, training, information sharing, reporting requirements, and cost/benefit analyses. Our oversight reports also emphasized a concern that the overall focus within the Department has traditionally been on civil rather than criminal enforcement, although we clearly recognize the importance and utility of civil enforcement.

However, the OIG remains the primary investigating unit within DOL for criminal labor racketeering and organized crime matters. When the OIG refers to "labor racketeering," we are generally referring to one of two circumstances: (1) Labor-related criminal conduct involving unions and/or industries with demonstrated ties to, or influences by, known organized criminal groups, whether they be traditional LCN groups or newer, non-traditional groups, or; (2) significant, prolonged, systematic criminal conduct by a group of individuals. For example, a group of union and management representatives may be systematically diverting benefit plan funds over a period of 2 or 5 or 10 years, and we would consider this to be "labor racketeering," whether or not there are traditional or non-traditional "organized crime" elements involved. In contrast, if one union or management official steals a sum of money from a plan in what appears to be an isolated incident, we are probably looking at a potential criminal violation under ERISA which would normally be investigated by DOL's Pension and Welfare Benefits Administration. Although there is some overlapping investigative authority, my experience since becoming the Inspector General has been one of cooperation between the OIG and other components within the Department, including joint investigations in some cases.

Given this overlapping authority, the issue of consolidating certain investigative functions within DOL naturally arises. In 1986, the President's Commission on Organized Crime (PCOC) issued a comprehensive report outlining the influence that organized crime had on business and labor unions. One of the issues addressed by the PCOC was the possible consolidation of criminal enforcement activities within the Department of Labor, and the PCOC recommended that DOL's responsibility to investigate and enforce criminal and civil violations of labor laws affecting unions and benefit funds be consolidated under one authority. The PCOC went on to recommend that this new authority be mandated to provide formal and effective cooperation with the OIG, DOJ, and other pertinent federal agencies.

This recommendation has not been implemented, and the issue of consolidating enforcement functions within DOL resurfaces on occasion. Several years after the PCOC made its recommendations, there was a suggestion made within the Department that a consolidation of this sort be effectuated under the OIG umbrella, and at one point there was some discussion about the establishment of a DOL criminal enforcement unit similar to the

PCOC recommendation. Neither of these suggestions went very far. However, it is my opinion as the Inspector General that if any sort of consolidation is done, it will not result in increased and/or more effective criminal enforcement of the labor laws unless the component which has this function is independent from the regulatory branches of the Department and from any political influence within the Department. This is precisely why the OIG's labor racketeering office was established almost 20 years ago, and the same rationale is just as relevant today. The OIG has this independence, as well as considerable expertise and experience in this area, and we believe that any sort of consolidation which dilutes these attributes will do more harm than good in terms of overall enforcement.

Traditional Labor Racketeering Priorities

After its establishment in 1978, the OIG directed its attention to supporting the Organized Crime Strike Force's efforts to target traditional organized crime figures engaged in classic labor racketeering violations, such as embezzlement, bribery. and extortion. These traditional priorities were highlighted in the 1986 PCOC report which detailed the way that racketeers employed new and more sophisticated methods to exploit union members and infiltrate the marketplace, and made various recommendations which the OIG has consistently strived to implement.

The PCOC identified four international unions which were under the control of traditional La Cosa Nostra (LCN) organized crime entities. These unions were the International Brotherhood of Teamsters (IBT), the Laborers' International Union of North America (LIUNA), the International Longshoreman's Association (ILA), and the Hotel Employees and Restaurant Employees International Union (HEREIU). Over the past ten years, 35% of the Division of Labor Racketeering's cases have involved allegations of corruption in these four unions, and significant progress has been made in addressing this corruption. This effort alone has resulted in over 500 criminal indictments and civil RICO actions for racketeering-type offenses.

In 1989, following investigations conducted by the OIG and the FBI, the Government filed a civil RICO action against the Teamsters and subsequently entered into an agreement with this union to eradicate corrupt influences in their organization. In the early 1990s, a racketeering action was filed against six of the New York locals of the ILA, which resulted in the removal of numerous ILA officials. In March 1995, again as a result of joint investigative efforts by the OIG and the FBI, the Government entered into a agreement with LIUNA to install a private inspector general. In January 1996, LIUNA agreed to hold its first direct election of international officers by the union's membership, which we believe will go a long way to restoring democracy for the union and giving the union's membership a voice in the way that the union conducts its business.

In September 1995, a civil RICO settlement was entered into with the HEREIU, stemming from an investigation conducted by the OIG and the FBI which established that the General Executive Board of HEREIU had operated the union as a racketeering enterprise. Racketeering acts by the General Executive Board included: appointing organized crime members and associates to positions within the HEREIU; permitting improper expenditures of union assets, and aiding HEREIU officials in accepting items of value from employers. The agreement and the Court's decree required the appointment of a monitor who is empowered by the court to investigate corruption within HEREIU, remove corrupt officials, and oversee operations of the union. The consent decree also calls for the establishment of an ethical practices code and a public review board. Six of the union's executive board members have agreed to resign or retire since the beginning of the negotiations for this settlement.

Mr. Chairman, the job is not finished with respect to these international unions, and to illustrate this point, I would point out that the OIG continues to provide assistance and cooperation to the court-appointed monitors for the IBT and the HEREIU..

We are also expending resources to investigate labor racketeering violations in unions other than the "Big 4." For example, we recently conducted a joint investigation with the FBI of the Marine Engineers Beneficial Association of America/National Maritime Union (MEBA/NMU) which resulted in the racketeering convictions of five former union officers. These individuals were involved in a scheme involving the theft of over $2 million of union funds, as well as election fraud and the extortion of political fund contributions. This prosecution, which took place here in Washington, D.C., marked the first RICO conviction of the entire governing board of a national union. The former president of the union received a 5 year prison sentence and was ordered to forfeit $2.5 million. This case also established an important legal precedent involving the use of the mail fraud statute in cases involving union elections.

New Programs and Initiatives

With the successes that the Federal Government has experienced in the removal of LCN figures from labor unions, the OIG has noted several new trends. One of the most prominent changes in the labor racketeering landscape is the expansion from more "traditional" labor violations in the labor-management relations side of union affairs, to the more complex area of employee benefit plans. This has occurred, in part, as a result of the size and vulnerability of the benefit plan funds. Individual employee benefit plans can total hundreds of million of dollars -- thus making them an attractive target to criminals. Corruption in employee benefit plans has become the province of "new" racketeering groups comprised of attorneys, accountants, service providers, bankers, insurance agents, and other "white collar" individuals.

Health Insurance Fraud

Employee health benefit plans offer an especially inviting target for criminals since the money often passes through numerous hands and several administrative layers, and there are multiple opportunities to divert funds at each level. In addition, the very nature of the insurance industry -- the receipt of money today to pay expenses for a future event (that may or may not happen) -- makes it inviting to criminals.

Our initial entry into health care fraud was through our investigations of union health benefit plans. Those early investigations disclosed that organized crime elements had infiltrated benefit plans through the control of certain unions, siphoning millions of dollars out of legitimate union plans through excessive administrative costs, unauthorized participants, outright embezzlement of plan assets, and kickbacks.

While it is the money and cash flow that attract criminals to benefit plans, it is the complexity of the Employee Retirement Income Security Act (ERISA) that all too often allows them to elude regulators and investigators. For years, operators have exploited the lack of clarity in the provisions of ERISA regarding its preemption of state laws. Fraudulent health insurance plan operators can claim to be ERISA-covered plans and try to elude any state scrutiny under the statute's preemption clause. As a result, a number of state insurance commissioners came to the OIG several years ago asking for our assistance because of difficulties they were having in investigating multi-state schemes and obtaining jurisdiction over persons and assets. This led to the OIG's focus on multiple employer welfare arrangements.

Multiple Employer Welfare Arrangements

Soaring health insurance costs and the difficulty in obtaining major insurance company coverage in the small-employer market have forced many small companies to search for more affordable health care coverage. This search has caused many small employers to buy insurance through self-funded group health plans, known as multiple employer welfare arrangements (MEWAs). MEWAs can allow several small employers to pool their premiums and secure coverage at rates similar to those that a large employer might pay -- rates that are often significantly below those traditionally charged for small group coverage. I must take a moment to point out that most MEWAs are well-run, collecting premiums and paying benefits as they had promised. Occasionally, a plan may fail because it has not been well-managed, has had inadequate reserves, or has set premium rates that are too low to cover the costs of the claims.

Unfortunately, some MEWAs have failed for other reasons -- including embezzlement, and diversion of premium monies to fund the operators' lifestyles or to shore up their other businesses. One illustration of the devastating effect these fraudulent MEWA schemes have on everyday citizens is an investigation of a fraudulent MEWA which we conducted in Florida. This operation bilked more than 40,000 policy holders out of over $34 million in

premium payments, leaving the victims stuck with over $50 million in unpaid medical claims. In addition, Mr. Chairman, it is important to note that an important impact of these schemes is that some of the victims will be left not only with unpaid bills, but also with "pre-existing conditions," making it difficult for them to receive coverage for these "conditions" under a new insurer.

Bogus Labor Unions

As Federal and state investigative pressure has been applied to traditional MEWA schemes, fraudulent MEWA operators have attempted to cloak themselves in other disguises. One of these disguises involves portraying themselves as labor union-sponsored health plans. Our investigations reveal that some individuals form what they hold out to be "unions," but which are in fact no more than a ruse that they create to sell health plans and to avoid state insurance regulation. Under ERISA, health plans that are part of a union's collective bargaining agreements are exempt from state regulation. For years, many unions have run completely legitimate health plans under this exemption. However, our investigations have shown that fraudulent plans have been misusing this exemption as a "safe harbor" from state regulation in order to sign up small businesses for benefits that they may never see. These bogus unions generally fail to do the kinds of things that typically define a union, such as truly providing representation to members with respect to labor-management issues.

One example of a non-existent union scheme that the OIG worked on involved a MEWA in California. After a two-year investigation, the State of California issued a cease and desist order on the plan. Within a week after issuance of this order, the operator of the MEWA had moved all of his bank accounts, plan records, and staff to Arizona, where he reopened his business under a new name -- this time operating as a union -- even though no union actually existed. In fact, it is doubtful that the plan participants ever even knew that they were actually in a union. This case is a particularly striking example of how difficult it is for law enforcement agencies to enforce the current statutes concerning ERISA-covered health insurance plans. The State of California could do nothing more in this case because the cease and desist order pertained to a MEWA which no longer existed. The State of Arizona simply was not yet prepared to address this brand new "union."

Another case demonstrating the adaptability of non-existent unions involved an individual who set up a local union in New York solely for the purpose of collecting premium payments, with no intention of ever providing benefits. After we shut down his local union, this "entrepreneur" simply went a step further and created an international union. Apparently, he had analyzed his previous mistakes and decided that he needed to remove himself from the level of actually selling insurance, to the level of selling local union charters to other individuals who would then peddle the insurance. In other words, he was selling the "franchise" to market fraudulent union-sponsored health plans.

Industry Probes

In conjunction with one of the recommendations of the PCOC, the OIG has increased its emphasis on combatting labor racketeering by conducting "industry probes" which examine the vulnerabilities existing within an industry. These probes are designed to address the underlying causal factors of labor racketeering problems, to restore competitiveness in industries with balance in labor-management relations, to protect the interests of the American worker, and to increase the long-term impact of Division of Labor Racketeering cases. These investigations have as their goal the development of a series of criminal cases which can be utilized as predicates for court-imposed corrective action. Utilizing the criminal and civil provisions of the RICO statute, as well as the equitable relief powers of the court, the OIG not only seeks convictions, but also to get back ill gotten gains to make the workers whole, create a deterrent to further criminal activity, and impose reforms to address the underlying causal factors.

For example, an OIG probe into LCN's domination of the garment industry in New York City generated several investigations which revealed that the LCN controlled, to a large extent, garment manufacturing, trucking, and the unions operating within the industry. The LCN families were able to utilize this control to extract a "tax" in the form of kickbacks or extortion payments from garment industry-related employers. They used their control to favor certain manufacturers by permitting the manufacturers, in violation of collective bargaining agreement, to use cheap labor in non-union shops to produce garments at less cost than would have been possible in a union shop. Many of the non-union shops were located in the Chinatown section of New York City where the work force was -- and continues to be -- substantially comprised of illegal aliens who are smuggled into the U.S. by non-traditional organized crime groups. The impact of this domination by the LCN over this industry is that it provided the crime families with a tariff on each garment and resulted in the erosion of the traditional union shop.

Another probe into the newspaper and magazine distribution industry in the New York City area not only illustrates the effectiveness of the industry probe strategy, but it also depicts the emergence of non-traditional groups. Initially, the OIG looked at allegations related to union involvement in a scheme concerning the systematic theft of newspapers by the LCN, which resulted in a series of indictments in 1992. This probe also revealed that the traditional LCN members were working in conjunction with a non-traditional organized crime group known as the Patels, who are of predominately of Indian and Pakistani ethnic origins. In 1995, in the second phase of this investigation, individuals who were confirmed to be members or associates of the Patel organization were arrested by OIG Special Agents and Postal Inspectors for their connection with a scheme to purchase more than $100,000 of new magazines, which had been stolen with the knowledge of union drivers, for between 15 and 30 percent of the magazines' face value. The defendants, who were employed in an extensive network of convenience stores and newsstands, then sold the magazines to the public at face value or returned the unsold magazines to the distributor for full credit.

Concerns

Mr. Chairman, you have asked the Office of Inspector General what our main concerns are with respect to the investigation of labor racketeering. Our office has had an ongoing concern regarding the definition of its statutory authority which, as indicated earlier, is based upon its participation in the DOJ Organized Crime Strike Force. While this definition of authority may have been sufficient in 1978, we believe that a more direct and specific statutory definition of authority would permit the OIG to remain a completely flexible and responsive law enforcement agency.

The current definition of authority has caused the OIG to operate under a piecemeal set of agreements and memoranda of understanding with the FBI and DOL components. With respect to the agreements with the FBI, the OIG is often required to make specific requests for approval from DOJ to conduct investigations which are clearly related to labor racketeering. Although this approval is routinely granted, this procedure is inefficient.

This definition has also created undue confusion with respect to the deputation authority of Division of Labor Racketeering investigators. Most importantly, it has at times created unnecessary caution when the OIG is faced with new criminal schemes and players, due to an apprehension that our lack of clear authority will impact upon a successful prosecution or place our agents in a potentially untenable personal liability circumstance.

Recommendation

Based upon this concern, I would recommend that Congress consider a statutory clarification of the OIG's labor racketeering investigative authority which would make clear its authority to investigate those matters directly related to internal union affairs, labor-management relationships, and union benefit plans, as well as define its authority to investigate other matters which may have a significant impact on these areas.

Mr. Chairman, this concludes my prepared statement, and I am prepared to answer any questions that you or the other members of the Subcommittee may have.

U.S. Department of Labor

Office of Inspector General
Washington, D.C. 20210

JUL 5 1996

The Honorable Christopher Shays
Chairman, Subcommittee on Human Resources
and Intergovernmental Relations
Committee on Government Reform and Oversight
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

On June 14, 1996, you wrote to the Secretary of Labor, Robert B. Reich, requesting certain documents and information in conjunction with the Subcommittee's upcoming hearing on "Oversight of Department of Labor's Efforts Against Labor Racketeering."

The Department of Labor (DOL) has general investigative authority for various labor statutes, including the Labor Management Reporting and Disclosure Act and the Employee Retirement Income Security Act, and thus conducts civil and criminal investigations related to unions and employee benefit plans. However, the Inspector General Act of 1978 gave the DOL's Office of Inspector General (OIG) primary criminal investigative authority within the Department with respect to labor racketeering and organized crime matters. Pursuant to this authority, the OIG has conducted labor racketeering investigations in conjunction with the Department of Justice's Organized Crime Strike Force and with various United States Attorneys' Offices. Therefore, in order to ensure that the Subcommittee receives complete and accurate information regarding the subject of DOL's efforts against labor racketeering, the OIG is responding separately to questions (6) through (8) in your letter to Secretary Reich, and we have taken the liberty of adding the OIG to the three DOL components which you specifically name in these questions.

(6) Your assessment of how effective the Office of Labor-Management Standards, the Pension and Welfare Benefits Administration, and the Office of the Solicitor have been in their efforts to combat criminal activity in labor unions since 1985, especially with respect to labor racketeering and organized crime. Please provide data to support your conclusions. If extended data is provided, please summarize the findings.

As part of its oversight responsibilities, the OIG has not done any recent oversight work with respect to the specific issue of the Department's efforts to combat criminal activity in labor unions. However, the OIG has reviewed DOL's overall criminal enforcement efforts on several occasions. In June 1990, we issued a report on these efforts and in March 1995, we issued a fourth and final status report on this subject. This final status report concluded that DOL's overall criminal enforcement efforts,

which include PWBA and OLMS, remained inconsistent and uncoordinated, and these efforts lacked an integrated approach to common criminal enforcement issues such as case documentation, training, information sharing, reporting requirements, and cost/benefit analyses. Our oversight reports also emphasized a concern that the overall focus within the Department has traditionally been on civil rather than criminal enforcement, although we clearly recognize the importance and utility of civil enforcement.

With respect to the OIG, we believe that we have a very commendable record of achievement in combatting labor racketeering and organized crime in labor unions. Since its inception in 1978, OIG investigations have resulted in almost 2000 indictments and over 1500 convictions related to labor racketeering offenses.

The OIG is particularly proud of its achievements with respect to the four large international unions highlighted by the 1985 President's Commission on Organized Crime (PCOC). The PCOC identified four international unions under the control of *La Cosa Nostra*: the International Brotherhood of Teamsters, the Laborers' International Union of North America (LIUNA), the Hotel Employees and Restaurant Employees International Union (HEREIU), and the International Longshoremen's Association (ILA). After considerable effort by our agents and agents from the Federal Bureau of Investigation, as well as innovative approaches by the Department of Justice (DOJ), there has been real progress in combatting the influence of organized crime in these unions.

In the early 1990s, a racketeering action was filed against six of the New York locals of the ILA, which resulted in the removal of numerous ILA officials. In 1989, after filing a civil RICO action, the Government entered into an agreement with the Teamsters to eradicate corrupt influences in their organization. In March 1995, the Government entered into a consent agreement with LIUNA which resulted in the installation of a private inspector general within the union. In January 1996, LIUNA agreed to hold its first direct election of international officers by the union's membership, which we believe will go a long way to restoring democracy for the union and giving the union's membership a voice in the way that the union conducts its business.

In September 1995, the Government entered into a civil RICO settlement with the HEREIU. The investigation which led to this agreement found that the HEREIU's General Executive Board had operated the union as a racketeering enterprise, with racketeering acts including the appointment of organized crime members and associates to positions within the HEREIU, improper expenditures of union assets, and HEREIU officials accepting items of value from employers. The agreement and the Court's decree required the appointment of a monitor who is empowered by the court to investigate corruption within HEREIU, remove corrupt officials, and oversee operations of the union. The consent decree also calls for the establishment of an

ethical practices code and a public review board. Six of the union's executive board members have either resigned or retired since the beginning of negotiations for this settlement.

In another recent OIG case involving corruption in a large international union, five officers of the largest maritime union in the United States, the Marine Engineers Beneficial Association of America/National Maritime Union were convicted last July of racketeering. Their scheme involved the theft of $2 million dollars of union funds, election fraud, and extortion of political action fund contributions. All five officers were also convicted of soliciting blank election ballots from union members and then voting the ballots for themselves, as well as tampering with legitimate ballots and replaced them with improperly obtained ballots.

Our investigation identified longstanding election fraud and coercive political action fund solicitation practices within the maritime industry. The investigation demonstrated that the union officials sought to benefit only themselves and failed to uphold their responsibility to the rank-and-file membership of the union. Aside from the potential deterrent effect on future abuses by union officers in elections, this case is significant for the legal precedent that it establishes in the use of the mail fraud statute in fraudulent state and local elections. This prosecution is also the first RICO conviction of the entire governing board of a national union.

These are just some examples of the OIG's efforts to combat labor racketeering. If desired, the OIG would be glad to provide the Subcommittee with more detailed information describing other significant labor racketeering investigations which it has conducted. Many of these cases are described in our semi-annual reports to Congress.

(7) A statement of your views and recommendations regarding what additional tools, statutory changes, etc., that you believe would enhance the effectiveness of the Office of Labor-Management Standards, the Pension and Welfare Benefits Administration, and the Office of the Solicitor in combating criminal activity in labor unions, especially with respect to labor racketeering and organized crime.

The OIG has, for many years, recommended certain changes related to employee benefit plan enforcement which we believe would enhance the effectiveness of the Pension and Welfare Benefits Administration, as well as other law enforcement agencies, to combat illegal activity. These recommendations include an amendment to the ERISA statute which would result in the removal of the "limited scope" exception for audits of benefit plans. This "limited scope" provision currently allows benefit plan funds being held in federally regulated entities, for example savings and loans, banks, and insurance companies, to escape audit scrutiny. We believe this is a dangerous loophole which puts at risk the assets of many plan beneficiaries. We have also advocated an amendment which would require independent CPAs to report

indications of illegal activity as part of their audit duties. Both of these recommendations are contained in bills which are currently pending in Congress (S. 1490 and H.R. 3520).

We have also recommended certain changes in the criminal statutes related to labor racketeering. These changes include penalties for bribes made by benefit plan service providers and the inclusion of municipal benefit plans in ERISA, which would make such plans subject to the criminal embezzlement provisions in 18 USC 664.

The OIG also has an ongoing concern regarding the definition of its own statutory authority, which is not fully spelled out in legislation and is based upon its participation in the Organized Crime Strike Force. In response to a Presidential initiative to combat organized crime, DOJ created Organized Crime and Racketeering Strike Forces around the country in 1967. The Department of Labor was a participant in this initiative with respect to investigating labor-law violations committed by organized criminals and racketeers. Congress soon recognized the need for an independent labor racketeering investigative function, which would be shielded from any possible political interference. When the Inspector General Act was passed in 1978, Congress placed this authority, which was still framed in terms of DOL's participation in the DOJ Strike Forces, under the OIG.

Both organizational changes within DOJ and the OIG, and the lack of direct statutory investigative authority, have caused the OIG to operate under a piecemeal set of agreements and memoranda of understanding with DOJ, the Federal Bureau of Investigation (FBI), and other DOL components. With respect to the agreements with the FBI, the OIG is often required to make specific requests for approval from DOJ to conduct investigations which are clearly related to labor racketeering. Although approval is routinely granted, this procedure is inefficient. This lack of clarity has also created undue confusion with respect to the deputation of Division of Labor Racketeering investigators by DOJ. Most importantly, it has at times created unnecessary caution when the OIG is faced with new criminal schemes and players, due to an apprehension that our lack of clear authority will impact upon a successful prosecution or place our agents in a potentially untenable personal liability circumstance. We believe that the interests of effective law enforcement would be best served in 1996 if the OIG's labor racketeering authority was specifically and directly spelled out by Congress, so that the OIG can effectively respond to the continuously changing labor racketeering arena.

(8) A list of the most serious problems faced by DOL in combating criminal activity in labor unions, particularly with respect to labor racketeering and organized crime, with a brief explanation of each problem.

We believe that the Department will provide a response to this question as it concerns non-OIG components. In terms of the OIG, we have noted several new trends related

to labor racketeering. One of the most prominent changes is the expansion from more "classic" labor violations in the labor-management relations side of union affairs (for example, extortion, kickbacks, sweetheart deals, etc.), to the more complex area of employee benefit plans. In part, this has occurred as a result of the size and vulnerability of the benefit plan funds. Individual employee benefit plans can total hundreds of million of dollars -- thus making them an attractive target to criminals. Consequently, corruption in employee benefit plans has become the province of "new" racketeering groups comprised of attorneys, accountants, service providers, bankers, insurance agents, and other "white collar" individuals.

We have also noticed the proliferation of new categories of labor-related entities, which in some cases are established solely to evade regulatory requirements or to commit criminal acts. These entities include "bogus" or "phantom" unions, unions offering "associate" memberships, and "labor leasing" entities.

Another trend which OIG investigations continue to reveal is the emergence of "non-traditional" organized crime groups into the labor racketeering arena. Several recent investigations into union-dominated industries have uncovered instances where the organized crime groups responsible for the racketeering operations are not the more traditional *La Cosa Nostra* (LCN) entities. Instead, we have come across Asian organized crime groups involved in alien smuggling, Indian and Pakistani groups involved in the systematic theft of newspapers and magazines, and other non-traditional groups.

Once again, the OIG would be glad to provide the Subcommittee with more detailed information concerning these trends.

Should you have any questions concerning this letter, or any other issues, please contact me on (202) 219-7296. I look forward to my scheduled appearance before the Subcommittee on July 11.

Sincerely,

Charles C. Masten
Inspector General

Mr. SHAYS. Thank you, Mr. Masten. Mr. Keeney.

Mr. KEENEY. Mr. Chairman, in my statement I set forth some of the background with respect to the labor-management statute, the health and welfare statute, and the developments since their enactment.

Today, Mr. Chairman, a labor union member who suspects union officials of stealing funds has a choice of three Federal investigative agencies which can receive his or her complaint: the FBI and, within the Department of Labor, the Office of Labor-Management Standards and the Inspector General's Division of Labor Racketeering.

Similarly, the employee who believes that the financial integrity of his or her pension or health and welfare benefit plan is being criminally abused may convey a complaint to one of three agencies: again, the FBI and, within the Department of Labor, the Pension and Welfare Benefits Administration and the Inspector General's Division of Labor Racketeering.

If allegations of criminal wrongdoing are substantiated by investigation, these matters are referred directly to the U.S. Attorneys Office in the respective districts where the crimes have been committed. Criminal Division attorneys at the Department of Justice have supported the prosecution of these cases in a number of ways.

Attorneys from our organized crime section have participated in litigation where the cases involve a significant pattern of criminal activity participation by organized crime or novel questions of law.

Criminal Division attorneys also provide legal advice to prosecutors and investigators in the field; assist in the preparation of pleadings, manual, and other written guidance; and participate in training programs for criminal investigators within the Department of Labor.

Mr. Chairman, we believe that these efforts have assisted the criminal investigative agencies within the Department of Labor to achieve significant results and to apply the criminal statutes in new ways, which are described briefly in my prepared statement.

Because the Inspector General's Division of Labor Racketeering is the agency which the Secretary of Labor has designated to assist the Organized Crime and Racketeering Strike Force program, I am more familiar with its operation than the enforcement programs operated by OLMS and PWBA.

I might say, Mr. Chairman, I have worked with what I call OLR, the Office of Labor Racketeering, prior to the enactment of the IG statute and have worked closely in various phases of their work ever since. Let me say the Department of Justice would like the IG's Division of Labor Racketeering to continue as a strong, independent, and visible organization dedicated to combating organized crime and labor-management racketeering despite budgetary constraints and scarce manpower resources.

However, I also appreciate that each of the criminal investigative components within the Department of Labor brings it own strength to the Federal Government's enforcement effort against labor-management, pension, and health care racketeering. Each component is important to prosecutors in the Department of Justice.

Now, Mr. Chairman, that concludes my summary of my prepared statement. I would be pleased to entertain questions, but first I

would like to make a correction with respect to my prepared statement. On page 8 of my statement in connection with the second example of health care abuse in the case which was investigated jointly by OLR and PWBA, it is stated that employees and their families were left with more than $5.6 million in unpaid medical claims. That figure should be 10 times that much. It should be $50 million in unpaid medical claims.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Keeney follows:]

JOHN C. KEENEY

ACTING ASSISTANT ATTORNEY GENERAL

CRIMINAL DIVISION

Good Morning, Mr. Chairman and members of the Subcommittee. I have been asked to discuss the Department of Justice's role in regard to criminal law enforcement programs within the Department of Labor and particularly those directed at labor racketeering. I would like to begin with some history.

Following the enactment of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), former Attorney General William Rogers and former Secretary of Labor James Mitchell signed a memorandum of understanding in February 1960 which delegated to the Federal Bureau of Investigation the authority to investigate crimes against labor unions in the private sector consisting principally of embezzlement of labor organization funds. The memorandum outlined a program in which the Labor Department's criminal investigative responsibilities were limited primarily to reporting and disclosure matters. However, the memorandum permitted different arrangements to be made by the two Departments on a case-specific basis while the Labor Department's criminal law enforcement resources and expertise grew during the years which followed.

Today, the labor union member who suspects union officials of stealing funds has a choice of three federal investigative agencies which can receive his or her complaint: the FBI and, within the Department of Labor, the Office of Labor Management Standards (OLMS) and the Inspector General's Division of Labor Racketeering. Many years ago the Justice Department discontinued the centralized referral of such cases through its Criminal Division. Instead, investigators refer matters for prosecution

directly to the United States Attorney for the district where the crime was committed. But, Criminal Division attorneys continue to provide legal advice to both investigators and prosecutors in the field, particularly in regard to the statutory disqualification of convicted labor organization officials (29 U.S.C. § 504), through the Labor-Management Unit of the Organized Crime and Racketeering Section.

In matters connected with organized crime and labor racketeering, Criminal Division attorneys also participate in the litigation of significant cases involving the internal affairs of labor unions. For example, approximately one year ago attorneys in the Litigation Unit of the Organized Crime and Racketeering Section convicted the entire governing body of District I - Marine Engineers Beneficial Association of racketeering based on a nationwide election fraud scheme, embezzlement of approximately $2 million in severance benefits from the union treasury, and extortion of union members' election ballots and contributions to the union's political action fund. The convictions in United States v. Eugene DeFries, et al., Crim. No. 93-0117 (TPJ) (D.D.C.) are now pending appeal; other defendants remain to be tried. We believe that this case, which was investigated by the Labor Department's Division of Labor Racketeering and the FBI, reflects the first criminal conviction of a labor union's executive board having nationwide authority and the use of criminal prosecution on this scale to punish election abuses within a labor organization.

In February 1975, the Departments of Justice and Labor entered into a second memorandum of understanding whereby it was agreed that the FBI would investigate the three felonies consisting of embezzlement, false statements, and bribery (18 U.S.C. §§ 664, 1027, and 1954, respectively) involving the operation of employee pension and welfare benefit plans subject to the Employee Retirement Income Security Act (ERISA). The memorandum contemplated that Labor Department investigators would direct their criminal investigative efforts primarily at matters involving reporting and disclosure. However, like the earlier memorandum involving labor unions, different investigative arrangements were permitted on a case-specific basis which frequently occurred in cases being investigated by Labor Department agents on behalf of the Organized Crime and Racketeering Strike Forces that had been created in the late 1960's. Moreover, in 1984 Congress expressly authorized Labor Department investigators to detect, investigate and refer for prosecution, on the same basis as the FBI, criminal violations of ERISA and other related federal laws, if the violation involved a pension or health and welfare plan subject to ERISA. 29 U.S.C. § 1136(b). All such crimes are referred directly to United States Attorneys' offices by the FBI or, within the Department of Labor, by the Pension and Welfare Benefits Administration (PWBA) or the Inspector General's Division of Labor Racketeering.

4

Since 1990 the Labor Department's PWBA has augmented its criminal law enforcement program with criminal investigative training for all of its investigators. Criminal Division attorneys regularly participate in such training as instructors and assisted in the preparation of a manual entitled Prosecutors' Guide: Criminal Case Prosecutions Involving Employee Benefit Plans, which was published by PWBA in 1994. The guide includes model pleadings and discussions of issues frequently encountered in ERISA criminal prosecutions, especially in cases involving abuse of employee group health care plans by corrupt health care insurance providers.

Criminal Division attorneys also provide legal advice to prosecutors and investigators concerning ERISA prosecutions. In one such prosecution, a broker of employee health care programs was recently convicted of ERISA theft and other crimes in connection with a scheme to market to employers workmen's compensation and medical care insurance. As part of their scheme, the defendants falsely represented their insurance arrangements as collectively bargained employee benefit plans exempted by ERISA from state insurance regulation. United States v. Lawrence Kenemore, et al., 95-CR-099-D (N.D. Texas guilty verdicts returned May 2, 1996). Jointly investigated by PWBA, FBI, and IRS investigators with the Texas Department of Insurance, the defendants defrauded 290 subscribing employers of $1.7 million in premiums and diverted $1.2 million for their own benefit, leaving employees with more than $1 million in unpaid

claims. The scheme involved the use of a bogus labor unions which did not organize employees, hold elections for union officers, or represent employees in labor-management disputes and negotiations.

Criminal Division attorneys also participated in the litigation of the first successful prosecution of larceny from an ERISA plan based on an employer's willful failure to forward employee contributions to plan accounts. United States v. Grizzle, 933 F.2d 943 (11th Cir. 1991). We believe that this prosecution greatly assisted PWBA's program of enhanced enforcement against employers who abuse their employees' so-called 401(k) pension plans by using employee contributions to operate their companies or for other non-benefit plan purposes. We understand that as of June 12, 1996, the PWBA program, which was announced by the Secretary of Labor in November 1995, had recovered $8.76 million for workers covered by 401(k) pension plans. The latter figure does not include the $2.7 million of 401(k) contributions withheld from salaries of approximately 300 employees which the former owner of an engineering and consulting firm on Long Island, New York, admitted he had embezzled. United States v. Ralph Corace, Cr. 96-501 (LDW) (E.D.N.Y. guilty plea filed June 12, 1996).

The Criminal Division has a long-standing relationship with the investigators assigned to the Labor Department's Division of Labor Racketeering, which until recently was known as the Office of Labor Racketeering (OLR). Beginning in the late 1960's and

early 1970's, the Labor Department's labor racketeering investigators have provided the Organized Crime and Racketeering Strike Forces with benefit of the specialized knowledge and expertise which they derive from access to the regulatory and civil enforcement programs within the Department of Labor. In many cities labor racketeering investigators were co-located in the same offices with Strike Force attorneys. Strike Force attorneys participated in the 1978 hearings by the Senate Permanent Subcommittee on Investigations which focused on the Labor Department's assignment of sufficient numbers of permanent labor racketeering investigators to the Strike Force program -- an issue which former Secretary of Labor Ray Marshall attributed in part to problems of manpower resources and budgetary constraints. Because Labor Department managers decided to permanently assign labor racketeering investigators to the former Office of Special Investigations, which also investigated fraud in Labor Department programs, labor racketeering investigators later became part of the Labor Department's Inspector General's Office following enactment of the Inspector General Act in October 1978.

In 1987, the Criminal Division recommended that the Department of Justice designate all investigators assigned to the Office of Labor Racketeering as Special Deputy United States Marshals on a component-wide basis in order to provide qualified investigators with arrest powers and authority to carry firearms in the performance of their duties. Because the special

deputation has worked well, the Justice Department has renewed the component-wide appointment annually since 1987. Moreover, because the special deputation of investigators as agents of the Department of Justice permits them to perform limited investigative duties assigned to them by the Attorney General, investigators assigned to the Division of Labor Racketeering are also authorized to investigate prohibited employer payments to labor representatives in violation of the Taft-Hartley and Railway Labor Acts (29 U.S.C. § 186 and 45 U.S.C. § 152), crimes also investigated by the FBI.

Indeed, we are advised that cooperative efforts by Division of Labor Racketeering investigators and the FBI have never been stronger. For example, as the result of investigation by the FBI and OLR investigators, a real estate broker and a former employee benefit plan investment manager were convicted of racketeering, conspiracy, and ERISA bribery in connection with the investment of $300 million worth of assets for union-sponsored pension and welfare benefit trusts. The loss to the union-sponsored plans, conservatively estimated at $135 million, is believed to be the largest loss to employee benefit plans in connection with a criminal prosecution under the benefit plan bribery statute (18 U.S.C. § 1954) since its enactment in 1962.

As explained in the Inspector General's semi-annual report for the period ended March 31, 1996, the Division of Labor Racketeering has continued to combat organized crime and labor racketeering with investigations aimed at both traditional

organized crime groups such as La Cosa Nostra and emerging, non-traditional organized crime groups that adversely affect the workplace. It has also attacked abuses against employee health care plans and insurance regulators in investigations and prosecutions like those discussed in the report.

I would also commend to the Subcommittee's attention an earlier investigation by OLR investigators which resulted in the successful prosecution of the operators of an insurance company involving a scheme to defraud employee group health plans in 14 states of $5.5 million in health care premiums. The crime was accomplished by the operation of an unlicensed insurance company and an entity defined in ERISA as a multiple employer welfare arrangement or MEWA. As a result of the scheme, employees and their families were left with more than $5.6 million in unpaid medical bills. Another joint investigation by OLR and PWBA investigators resulted in the conviction of the operators of two group health care arrangements who defrauded approximately 6800 employers and 40,000 employees of approximately $34 million in health care premiums over a six-year period. Employees and their families were left with more than $5.6 million in unpaid medical bills by a scheme involving misrepresentations that the two trusts would be operated for the exclusive purpose of providing employee health care benefits, embezzlement of more than $2.8 million from the trusts, receipt of approximately $280,000 in kickbacks from third party administrators and insurance agents, and laundering of the proceeds.

I might add that these type of cases involve injury to "victims" in the truest sense of that term who sought only to secure medical care for their families and who were blind-sided by these defendants' fraudulent schemes. These type of victims should be contrasted with individuals who are sometimes defrauded by defendants offering them quick wealth in return for their investment of funds. In many instances, individual victims of health care abuse are left with unpaid medical claims which threaten their families' financial stability. And, by falsely claiming to be exempt from state regulation, corrupt health care insurers have avoided payment of premium taxes used to maintain state guaranty funds for health benefits. Worst of all, victims who are diagnosed with illnesses during the time they are "covered" by illicit health care insurers are often rendered uninsurable by legitimate providers thereafter as a result of their pre-existing, but untreated, medical conditions.

Mr. Chairman, we understand that because budgetary constraints and scarce manpower resources continue to be a problem for the Labor Inspector General, as they are for all agencies in the Federal Government, the authorized strength of the Division of Labor Racketeering has fallen by approximately 20 positions during the last six years. We further understand that the Inspector General is implementing managerial changes to ensure that the effectiveness of the labor racketeering program is not diminished. We support an effort which will maintain the Division of Labor Racketeering as a strong, independent, and

visible organization dedicated to pursing the government's program against organized crime and labor racketeering, including, I might add, pension and welfare plan racketeering.

I understand that the Subcommittee is also interested in discussing the implementation of recommendations made by the President's Commission on Organized Crime in 1986 which were designed to rid business and labor unions of organized crime's corrupt influence. The Edge: Organized Crime, Business and Labor Unions - Report to the President and the Attorney General (President's Commission on Organized Crime March 1986). As you know, the two strategic recommendations included an industry approach to labor racketeering investigations, which has been used successfully by both OLR and the FBI, and a more aggressive use of the Racketeer Influenced and Corrupt Organizations (RICO) statute (18 U.S.C. § 1961, et seq.). Since 1982 the Justice Department has filed or settled 18 civil RICO actions involving labor-management relations in which 15 labor unions and 2 employer associations were placed under a court-appointed or approved trustee or monitor.

This concludes my prepared remarks about the Department of Labor's criminal law enforcement efforts and its importance to prosecutors in Department of Justice. I will be pleased to entertain questions from Subcommittee members.

Mr. SHAYS. I want to clarify. So, as a result of the scheme, employees and their families were left with more than $50.6 million?

Mr. KEENEY. Instead of $5.6, it should be $50 million, just about 10 times.

Mr. SHAYS. OK, thank you.

Mr. KEENEY. An understatement.

Mr. SHAYS. The gentleman from Indiana.

Mr. SOUDER. I did not have an opening statement, did not ask for time to be yielded, so before I do a couple questions I want to make a few statements.

I am disappointed in all the subcommittees that I am on, and I am on six. This has been the most amiable and easy to get along subcommittee of all of them that we have worked with. And there are four Members on the other side, two of whom are here, Mr. Towns and Mr. Fattah, as well as Mr. Green and Mr. Barrett, who have been regular attenders and we have been fairly reasonable in our exchanges. It doesn't mean we agree on all things, but we have been fairly reasonable.

We had a number of Members come in here today as verbal hit men on the chairman and on the party. None of our Members—if this is such an orchestrated effort, none of our Members had organized statements other than the chairman. None of us. I didn't even have any particularly prepared questions because I work with the staff. I have materials here. I hadn't even read Boehner's memo until I dug it out here.

But I am really irritated at the attempt to intimidate Republicans from having this hearing by the type of comments that were made. Bob Dole's name was mentioned multiple times, and they said, but it had nothing to do with Bob Dole, but they mentioned him several times.

There was no mention of the President on this side. There was no criticism in any of our statements in the beginning trashing unions in general, yet I heard the business community be trashed by the other side, implying not that unions—I mean, it is one thing to make a statement that unions—without unions, some companies would take advantage of employees.

It is another thing to say without unions all companies would take—they are trashing the entire business community multiple times and making allegations in protestation that we might make such charges. They made such charges. And I found it extremely offensive. I intend to make extended comments in the written and make some tough comments that I didn't intend to do here.

But that is not the purpose of this hearing. In fact, when I read some of what I believe were unwise comments by our own leadership, I thought, well, maybe this hearing is going to be that. Then I looked through the testimony, I looked through the preparation, and I thought this is just typical, fairly bland, mild, typical Government Reform and Oversight hearing where we are trying to figure out what is going on.

And it is just one of the most upsetting experiences this morning and despicable performances by the other side in the name of higher power—you know, oh, we're above all politics—when they trash this hearing and play politics. And I am disgusted.

Now, the particular questions of the witnesses, and I am sorry that I didn't get that in the opening statement but I tried to follow the rules and not rebut—back in on my opening statement after I saw what was going back on.

I have a concern, Mr. Masten, that in your previous reports and in your testimony today, you suggested that a number of things, if they were done, presumably would lead to better efforts for enforcing racketeering and other types of labor violations.

What type of things do you believe might be found; what would be the advantages; and what might be some of the things that we could find had those coordination efforts, had that information, been available to the inspector general? In other words, you stated that there hasn't been coordinated efforts, there is no departmental framework. You have made a number of things.

Now, the presumption is that you believe that if those things were there, there might be some benefits. What would the likely—do you believe there would be more prosecutions? Do you believe they are short of evidence? Or are you just saying theoretically that might help?

Mr. MASTEN. No, no, I'm not saying theoretically. And I know that report you're talking about. You're talking about the March 1995 report. I have so many reports I did not know which one you were talking about.

If the actions are taken that are mentioned in that report, it would give all the entities of the Department of Labor, OLMS, PWBA, and the Office of Labor Racketeering, a concerted effort to prioritize their efforts with the limited resources they have. Right now, you never know what each agency is doing so you can't coordinate your efforts to really go after the big picture. That is one of the main recommendations that, if these things are done, that would help all three of us.

Mr. SOUDER. Why do you think it hasn't occurred?

Mr. MASTEN [no response].

Mr. SOUDER. I realize that is a judgment question. Rather than ask you a judgment question, do you believe—have you seen any evidence that there is a lack of interest in that? Has it been traditional across previous administrations?

Mr. MASTEN. No.

Mr. SOUDER. Is it just turf? I mean, it seems like prioritization would be something that would be a goal and, as the funds become more limited, that would be a preeminent goal.

Mr. MASTEN. Right. The prioritizing is going on in the respective entity. That is occurring. As I stated in my statement though, the cooperation since I have been the inspector general at Labor has been great. But that cooperation is on a regional basis, for example, in sharing information on some cases. It is not a national issue where it is done at the national level and filters all the way down. The coordination of a lot of the things that I suggested in that report will happen happenstance rather than in a coordinated fashion.

Mr. SOUDER. Do you believe that if the coordination were to happen less happenstance, do you have any from—I mean, presumably as you draw those conclusions it is not just a managerial theory; that you are concerned that either—is it some that you are more

concerned about in the insurance areas, in ERISA, or more concerned about other forms of racketeering? Is there anything that would jump out that suggests that the lack of coordination is more devastating in those areas?

Mr. MASTEN. Well, again, as I point out in my statement, we are not only dealing with the traditional organized crime families in the workplace; we are now dealing with the nontraditional organized groups in the workplace.

If the experts—PWBA, OLMS, the Office of Labor Racketeering—coordinate their efforts to address these problems, the coordination of those efforts will address the priority as identified collectively by those three entities, as opposed to OLR identifying one priority, PWBA another, etc. It will be a coordinated effort to do this.

Mr. SOUDER. Mr. Keeney, do you have any suggestions as one of the agencies what are some of the roadblocks prohibited that coordinated emphasis, and do you believe that would help as well in prioritizing?

Mr. KEENEY. I really can't address that. All I can say is that the Department of Justice, the Criminal Division, relationship with all three agencies is good. I have a personal bias in favor of the Division of Racketeering because I worked with them for over 20 years and their predecessors.

But we have also worked closely, particularly since 1990, with the PWBA in their training program. Our people participate in it every year. We prepared manuals for their people and we have also done similar, but lesser, things with OLMS.

I am really—we are satisfied with the relationship, Mr. Souder. That is about all I can say about looking at it from my perspective.

Mr. COSSU. Congressman, if I may address that for a minute. Where the independent agencies have come together in the past working with the Department of Justice, especially in the civil RICO examinations, it has proven to be a very useful tool, a very effective tool.

I think what the inspector general was alluding to is that we were looking—we are looking for, and I think we support, the PCOC in a much more formal structure because we see how this integrated approach has worked in limited instances as being a very effective tool.

Mr. SOUDER. The impression that I got from Mr. Keeney's statement, and you just kind of reinforced that, is that you are working on an ad hoc basis as an issue develops and where the need is, as opposed to a coordinated strategic plan of how you are going to approach racketeering of different types and cross-agency, and which could mean that rather than having a more traditional, active seeking, it is almost like you are stumbling into something or, if it jumps up so big then you scramble and deal with it, as opposed to an organized effort.

Is that an incorrect assessment of that, or do you believe that is an overstatement?

Mr. MASTEN. I think it is an overstatement, Congressman. A lot of our investigations are the result of criminal intelligence that you develop through informants, through sources, and all entities have their own means of doing this. If you coordinated that activity

though, those efforts, you would get a better picture of what is the real problem.

Mr. SOUDER. Do you agree with that, Mr. Keeney?

Mr. KEENEY. I don't have any further comment with respect to that.

Mr. SOUDER. Also, in the—I am trying to sort through, because it is important as we set up the next panel, I am not quite sure why the organized—I hear your answers and it is almost like you are saying it would be nice to have a coordinated effort but the Organized Crime Commission in its report said that the web of corruption presented by the many aspects of labor racketeering requires a coordinated model faceted and national strategy to counter.

And in your testimony you said that it would—it remains inconsistent and uncoordinated. And in February 1996, the Deputy Secretary of Labor responded that, due to statutory mandates and budgetary limitations, as well as objectives, it has been difficult to do that. Those are fairly hard statements and, yet, you are kind of—my impression of the way you are responding is that it would be nice but I am not feeling the urgency that the words necessarily imply.

Why are these reports so consistent and your comments consistent in saying that is it important to have this coordinated strategy and, yet, you are saying, well, it is occurring sometimes. You are not—I mean, what would be the benefits? Are you satisfied with how fast the Department of Labor is going with it?

Mr. MASTEN. Well, Congressman, I thought I was very clear in saying that the coordination of these efforts would greatly enhance our addressing the problems——

Mr. SOUDER. You are saying, "greatly enhance." What exactly do you mean by "greatly enhance"? How would it?

Mr. MASTEN. OK, instead of PWBA working a case involving one small, unknown entity involving a benefit plan that the Office of Labor Racketeering doesn't have a clue about and the Office of Labor Racketeering is working another case, if the two of them would get together to see if they may be possibly working a case that is controlled by the same entity, you could pool those resources and address one case, as opposed to having two cases going off two separate ways and having those two cases presented to two different assistant U.S. attorneys to make two prosecutive opinions.

And after the prosecutive opinion, have these people go off on different tangents. If it were coordinated, it would be one U.S. attorney involved in it, one entity the head of it, and it would be a joint investigation.

Mr. SOUDER. So can I—because I am not familiar and I am having to learn. That is why we have hearings for us to make better decisions, too.

In the drug area, often what that means if you don't have it coordinated, is you may have a local prosecutor and then a State pursuing something and the Federal, and because somebody turns and works just on this case here, we never are able to roll it into a bigger and bigger case.

Are you saying that this merely would reduce overhead by coordination, or are you saying that possibly by the coordination,

some things that look to be minor cases might turn out to be, when matched up across different informational systems, to be larger cases that could lead to bigger and bigger type investigations, like we see in drugs?

Mr. MASTEN. No; what I am saying as the coordination occurs it is going to give us an opportunity to prioritize our limited resources. I am not saying that if you are going to coordinate this you are going to greatly reduce the cost of running these three entities.

Mr. SOUDER. Do you believe that you would turn up bigger cases, like they do in drugs, if you coordinated different cases, that would you see inter-relations?

Mr. MASTEN. Definitely so. And I have had the experience of coordinating drug cases involving the State, local, FBI, and DEA.

Mr. SOUDER. Mr. Keeney, did you have a comment on that?

Mr. KEENEY. All I can say is, I mean, Mr. Masten runs the IG's office. He understands and he understands the relations with the other enforcement agencies. All I can say—and he is the expert on that. And all I can say is that from the Department of Justice perspective, we get along very well. We have rocky times occasionally with both Mr. Masten's office and OLMS and PWBA.

Mr. SOUDER. You wouldn't want to explain any of the rocky times?

Mr. KEENEY. Well, Mr. Masten, I can go into it. We have had over the years requests to have the IG's deputized. And it took a long time to work that out. But I think maybe you will agree with this, that we have worked it out. And that particular problem is largely a thing of the past.

Mr. MASTEN. Again, that is a very good example of coordination because the Department of Justice was granting these deputations that Mr. Keeney just mentioned on a case-by-case basis to approximately 14 different OIG's.

And the coordination, as introduced now, a blanket deputation where of the 26 IG's, I think 23 of them are covered with some form or another with the blanket deputation or with the legislative fix. That is an example of coordination.

Mr. SOUDER. Thank you very much.

Mr. SHAYS. The gentleman's time has expired. The gentleman had 10 minutes and, Mr. Towns, you have 10 minutes or more.

Mr. TOWNS. I will yield a couple of minutes to Mr. Fattah.

Mr. SHAYS. OK. Mr. Fattah.

Mr. FATTAH. I appreciate it because I have a conflict. But I do want to thank you, Mr. Masten for your testimony and I think you may even be helpful in larger areas because you may have convinced some of my Republican colleagues that this notion of devolution and a scattered approach to things has its limitations and that, to the degree that we coordinate national approaches, you know, whether it is school lunches or a whole host of things that they want to go the opposite direction on, you may have turned some of them around.

But let me ask you about one thing. You mentioned in your testimony that you are operating with decreasing resources. Can you talk to us about how the lack of resources, what impact that has had? And maybe this might be a perfect opportunity not only to argue for a different approach but to remind the Congress that it

is difficult to adequately and aggressively pursue these issues without resources.

Mr. MASTEN. Well, Congressman, it is just like anything else. You are asked to do more with less but, in some environments, there is a time when you actually have to do less with less. That is one of the reasons I was emphasizing prioritization of the limited resources that the three entities have now.

There are some major problems dealing with crime in this country and, in order to address those problems we have to take those limited resources and go with what is going to have the greatest impact on reducing those problems. So if you have more resources, in certain cases you could definitely do more. That was one of the reasons for the reorganization that I talked about in my testimony to maximize the limited resources that we have on our investigative approach as our mission called for, both on the program fraud side as well as the office of racketeering side.

Mr. FATTAH. Let me just delve into this whole issue of coordination just for a second. You know, on one level you have a coordinated approach by the Justice Department against organized crime and all of its variant aspects in which its intrusions into labor is maybe just one of many, many, multifaceted issues. And then you have, obviously, labor-related issues having to do with both organized and not so organized criminal activity from time to time.

So that as you look at your recommendations for coordination to the degree that we plan to followup on it at any level—I mean, I think we have to give some thought to how to make sure that we still don't hamper in any way the efforts at other levels. Sometimes when you have a coordinated approach and you have priorities, you know, matters that would have been aggressively pursued, since they are not on the priority list, don't get pursued. There is some advantage to having some level of entrepreneurial efforts through which people can strike out at what they perceive to be the most important issues.

Thank you very much for your testimony. And thank you for yielding, to my ranking member.

Mr. SHAYS. I wonder if the ranking member would yield to me, and if Mr. Fattah could just stay a moment. He raises a very interesting issue about the whole issue of devolution. I am not going to get into that debate here, but one of the things you may want to be aware of is, and I would like this to be on the record, that we had a hearing on corruption in Medicare and Medicaid.

Mr. Towns had submitted legislation, along with Mr. Schiff and I joined in on their effort, to make health care fraud a Federal offense, to actually move it from the States to the Federal Government. And in the health care bill that is sitting in the Senate that we all passed, what this committee uncovered we inserted in as a major amendment to the bill.

It is important for this committee to realize that besides just doing reports on what we find and sometimes suggesting legislation, that actually what we learn may come to fruition, and has. In the case of health care fraud, we are making it a Federal offense and it is going to be in au pair, not just Medicare and Medicaid, based on the work of the hearing you participated in. I consider this somewhat similar an issue. I thank the gentleman for yielding.

Mr. FATTAH. I think, and this is just a comment, having hearings is inseparable from us doing our job. I mean, we have to get information. And so I think that this is, obviously, part of the process.

It is important as we go forward, however, that we do it in a context in which people know that we are searching for information and that we are not part of any partisan witch hunt on any side of the aisle, because I think it would hamper our efforts to get information. And for working people who are members of unions, the last thing that they want to do is be victimized by racketeering.

So, I mean, it is in everyone's interest that we make sure that we are making every effort to get at these problems. But we don't want to seem as though we are approaching this with hands that are less than clean.

Mr. SHAYS. I thank the gentleman. Mr. Towns, we are going to start over with your 10 minutes right now.

Mr. TOWNS. Thank you very much, Mr. Chairman. Thank you very much. Mr. Masten, in your testimony you pointed out that almost as many management officials have been indicted and convicted as union officials.

Do you mean that management officials are also being found guilty of labor racketeering and, if so, what are the typical forms of racketeering that management might engage in?

Mr. MASTEN. Congressman Towns, I am going to let the assistant inspector general, Mr. Cossu answer that.

Mr. COSSU. Congressman, over the years, we have found that there is an equal amount of abuse by individual employers, and that abuse lends itself not only to the corrupt relationship that exists between that employer and the union but also, in some cases, where the union is not involved just by the employer being able to hold and to disguise some of these activities and the activities in his work.

And that generally results in a shortage, if it is a union shop, a shortage to the contributions being made to the employee benefit funds. In simple terms, an employer may have 40 people that are signed up with the union and chooses to hide 10 or 15 of those individuals off the union rolls.

And it, there again, becomes an item which the union may or may not be involved in. But, in any event, it is an employer that has sought to get the economic advantage by not paying the full benefit, by not paying the contributions that are necessary, and he is the one who is targeted in those instances by the IG.

Mr. TOWNS. Are certain industries more involved in that than others?

Mr. COSSU. It has been our experience that in the history since 1978, and especially since the PCOC since the 1986 report, the industries that were identified within that report still are a major concern to us. However, the corruption within the general industries is pretty much equal. The economic conditions somewhat drive the employer to try to get the best dollar out of his business, and often that is cheating the union and cheating the employee benefit funds in that manner.

Mr. TOWNS. Let me ask another question along the same lines. Are the same resources and initiative and determination and com-

mitment apply to root out corruption in management as in labor unions?

Mr. COSSU. I can only answer for the Office of Labor Racketeering, Congressman. Right now, 45 percent of our resources are devoted in the employee benefit area. And, generally, when we look at that we are looking at an initiative primarily at an employer/union relationship that would cause a deficiency of that employee benefit fund.

The balance of the resources are somewhat spread across the board to the internal union examination, as well as labor management examinations where investigations conducted by labor racketeering.

Mr. TOWNS. Mr. Keeney, do you want to comment on any of this?

Mr. KEENEY. Well, Mr. Towns, in my statement on page 4 and 5 we set forth certain examples with respect to criminal violations by nonlabor people. And that includes various thefts and it also includes particularly what we call the MEWA prosecutions, the multiemployer working arrangements whereby they get—somebody sets up an organization whereby they get a lot of small businesses to pay in premiums and, presumably, provide insurance at a lower cost for all of the members.

Now, we have had a number of prosecutions in that area which have been very successful, and those are situations where the employees are being defrauded and the entrepreneurs, as it were, are the ones who are reaping the benefits.

Mr. TOWNS. Thank you very much. Mr. Masten, you indicated, of course, in your verbal and also in your written statement, that the OIG's last review in March 1995, the Department of Labor overall criminal enforcement efforts were inconsistent and uncoordinated. You included the efforts of the Office of Labor-Management Standards and the Pension Welfare Benefit Administration.

Looking specifically at these two programs and their antiracketeering efforts, do you believe that they should focus additional resources on criminal enforcements?

Mr. MASTEN. Yes.

Mr. TOWNS. How then should resources and functions be coordinated and shared?

Mr. MASTEN. Congressman Towns, in my report I gave a very detailed listing of those. I can give you a snapshot. The case documentation, for example, those two entities tracking the intelligence involving some of the people or organizations involved in those cases cross-training their investigators to do criminal as well as the civil investigations.

It is my experience that these two entities concentrate a lot more on the civil side of issues rather than the criminal side. This coordination that I was talking about early on is the sharing of information with each other within the Department of Labor.

Mr. TOWNS. Will you need new money to be able to do this? I know this is a touchy subject. Let me just listen to my colleagues up here on both sides, you know, on the right, on the left, and in the middle. I listen to them in reference to what they are asking and they are demanding more of you, they want more done. And I understand that.

But it is also my understanding that you need resources to be able to do these things. How do we sort of create the atmosphere and climate to begin to talk about that. I know agencies come and you feel uncomfortable. I know when we do this you begin to twist a little bit. I understand that.

But I think that at some point we have to come to grips with this. We are going to ask you to do more and we expect more than then, at the same time, I think that we are cutting your budget. I am looking here at all these numbers. I have them all right here now in terms of every area that you have been cut.

I think that somewhere along the line that we have to get real. Now, I know it's not easy for you to sit across the table and, bang, this here is what you need when you are up here for a hearing. But at some point in time I think that we are going to have to sort of create the atmosphere and climate to let folks know that we can't continue to cut, cut, cut and expect the kind of results that we are expecting up here.

Mr. MASTEN. Congressman, I agree with you. And let me be very, very candid with you. In the Office of Labor Racketeering, for example, I believe over the last 6 years we have lost about 20 or 21 FTE's. That equates to many more than 100 cases.

The cases that we investigate in that division are very high priority cases. When you cut that number of agents or the funding for that number of agents out, you are eliminating that many cases that those agents who would have been hired cannot investigate.

So there are those times, as I said early on, you have to do less with less. But we are also mandated by our mission to promote efficiency, effectiveness, and economy. So whatever we get, we try to maximize those resources and my addressing the coordination between these three entities addressed the maximization of the limited resources we get.

You are absolutely right. If we had more resources, we could work more cases and we would get more convictions. There is no question about that. But the coordination in the Department of Labor I think could happen a lot less subtle with a clearer address to some of the recommendations. For example, I made legislative fixes on identifying the OLR's position and our responsibility. That would go a long way in helping.

Some of the memorandums of understanding that we have had in place within the Department of Labor have been around for a very long time. A lot of them are not even being adhered to, as I said early on, in some of the regions you have this coordination with my office and one of the offices or, in some cases, with all three of them. But that doesn't occur from the top down.

Mr. TOWNS. Mr. Chairman, let me commend all three of you for your statements and also to commend you on the outstanding job that you are doing with the amount of resources that you have. You can count on me to continue to try to fight to take it back in the other direction, rather than to take it down. I also would like to say to the chairman of the committee I look forward to talking with you more about this.

Mr. SHAYS. That is a very valid point and we should talk about it. The bill is before us today. I am asking one of my staff to see if we have the ability to look at an amendment on the floor, as late

as it is. There would have to be an offsetting amendment, but maybe you could tell us where there is some waste and fraud and we can eliminate it.

Mr. Green, you have the floor.

Mr. GREEN. Thank you, Mr. Chairman. Mr. Keeney, in looking at the report from since 1989 and the voluntary agreements that have been—at that time, three of the four international unions that was talked about—the teamsters, the hotel restaurant and, I guess, laborers, three of the four—they have agreed—signed voluntary agreements. And I know the teamsters——

Mr. KEENEY. Well, not all voluntary agreements. The LIUNA has signed a voluntary agreement and we have in our hands a document which enables us, if we are not satisfied with what they are doing, to get that before the court and the court would take over and supervise.

With respect to the teamsters, that is a court supervised operation. And with respect to the hotel and restaurant workers, that is a court supervised operation. Although it was entered into on a consensual basis, it is actually being monitored by the courts rather than us at this point.

Mr. GREEN. OK. So two of the three then are court ordered and monitored by the courts?

Mr. KEENEY. Right.

Mr. GREEN. Whereas, the LIUNA or laborers is actually an agreement and voluntary compliance?

Mr. KEENEY. It's an agreement and the court is not involved at this time. But it can be involved. It could be involved tomorrow because all we have to do is I have the authority to file a consent decree at any time.

Mr. GREEN. OK. So you have the hammer there if it doesn't work?

Mr. KEENEY. Yes, sir, we do.

Mr. GREEN. How would you describe the potential for these agreements, because I know there have been some allegations and it wasn't in this committee but it was in the other committee that I happen to be a member of that talked about particularly the voluntary agreement may not be as strong as court-ordered agreement. And if you can just address that, for the record.

Mr. KEENEY. Well, there are two parts to this. There is a voluntary agreement that they will put in place people who are acceptable to the Department of Justice, and they have done that in LIUNA. We monitor what those people are doing. There are something like 25 ex-FBI agents headed by a former assistant director who is doing the internal investigations in LIUNA.

And we prod them all the time and we are also free to conduct our own investigations. There are no limitations on the investigations that we can conduct independent of what is being done internally in the union. And, also, at any time that we are not satisfied with the progress being made in the so-called cleanup of the union by itself, we can file the order and the court immediately takes over. So I think we have the best of both worlds.

Mr. GREEN. And, again, to those of us who are not in it day-to-day, it looks like we are seeing compliance, at least from the 1989. In hindsight, do you think the Justice Department was correct in

both the two court ordered and the voluntary agreement that you have?

Mr. KEENEY. Yes, sir; I think we have been very—we have made a very effective utilization of the so-called civil RICO statute and we have cleaned up a lot of unions or are in the process of cleaning them up.

In addition to those you described, there are a number of local unions. There is a total of something like 19 civil RICO suits that have been brought against various labor unions and, for the most part, except for the 3, the others are local unions. Some of them broad-based local unions, for instance, the one in New York that has a very large membership.

Mr. GREEN. Those 19 that you say were brought, what is the oldest one? When was the oldest one brought?

Mr. KEENEY. Well, I think the first one was against Local 560 in New Jersey. That was a teamster union in New Jersey that was traditionally controlled by organized crime. We moved in, got a court order, and there was a gradual cleaning up of the union and, at least initially, we got out the organized crime elements.

Mr. GREEN. What year was that?

Mr. KEENEY. We're going back.

Mr. GREEN. So it was more than 10 years ago?

Mr. KEENEY. Nine, maybe 9, 10.

Mr. GREEN. Oh, 9 years? So it was that long ago?

Mr. COSSU. Since 1982 or 1983.

Mr. KEENEY. Mr. Cossu says it's 1982 or 1983 so it's back farther than I thought. But that was the trailblazer.

Mr. GREEN. Since January 1993 has there been any lessening or slacking off of investigations or civil prosecutions of organized crime activity in labor unions?

Mr. KEENEY. No.

Mr. GREEN. Since January 1993?

Mr. KEENEY. We are continuing the pressure. As a matter of fact, the FBI is mounting now a renewed, reinvigorated attack on organized crime across the board, which includes what has been referred to here previously as an industry concentration and a concentration on corrupt labor unions.

Mr. GREEN. And I guess, Mr. Chairman, and to the witnesses, you are the professionals and I look on you as that, like I think all of us do, and you are doing your job. One of the concerns I had was in reading some of the information. You heard all our opening statements is that there is some effort since January 1993, maybe under the Clinton administration, to have less activity on organized crime investigation in labor unions.

And your testimony today, except for the shortage of the funding that may be a problem, which you have in every Congress no matter who is in the majority, there has been no effort to not investigate corruption in organized labor?

Mr. KEENEY. That's right, sir. That is correct.

Mr. GREEN. Mr. Chairman, I thank you. I am glad we were able to bring that out at this committee hearing.

Mr. SHAYS. I thank the gentleman. Mrs. Morella.

Mrs. MORELLA. Thanks, Mr. Chairman. Mr. Keeney, according to the President's Commission on Organized Crime, there is a request

that there be a coordinated, multifaceted, national strategy to counter organized crime's infringement of economic and personal rights. And so I wonder——

Mr. KEENEY. I'm sorry, Mrs. Morella. I missed the latter part.

Mrs. MORELLA. Actually, the President's Commission on Organized Crime talked about the web of corruption, to quote exactly, "presented by the many aspects of labor racketeering requires a coordinated, multifaceted, and national strategy to counter organized crime's infringement of economic and personal rights." Direct quotes.

Now, my question to you is, To fight labor racketeering effectively, why shouldn't Federal agencies adopt a formal, coordinated, multifaceted, national strategy, or have some kind of a formal arrangement into which they enter, they work out among themselves, to act jointly to combat such behavior?

Mr. KEENEY. Well, it is obviously desirable, Mrs. Morella, but from my perspective, I think we are doing that. And I think we are doing it effectively. We are working with the IG here and in Labor we are working with the FBI, and we have our organized crime strike forces in the major cities.

And from the President's Commission on Organized Crime, they made a number of—they made major recommendations and some secondary recommendations. With respect to the major recommendations, concentration on particular industries, we are doing that. We are doing it by concentrating on the industry as such, and we are also doing it by using the so-called enterprise theory.

In other words, as an example, an enterprise would be some corrupt management people working with some corrupt labor people, and we are able to bring so-called RICO charges, racketeering infiltrated organizations charges, against them. And we are able to not only prosecute but we are able to disgorge a lot of the profits as a result of our prosecutions.

What you are saying is an ideal, and I don't disagree with it, but I think we are accomplishing an awful lot of that without the formal arrangements.

Mrs. MORELLA. You feel you do have a coordinated effort. Do you have a lead agency, like Justice?

Mr. KEENEY. Well, the FBI is the lead agency against organized crime but Labor and all the components in Labor are part of that. They have all contributed to the—all the people here today have contributed to our bringing the civil RICO cases, for example. But, yes, it is a coordinated effort headed by the FBI.

Mrs. MORELLA. Do you feel that you could streamline it in any way, I mean, if you could wave a magic wand and make it more efficient?

Mr. KEENEY. Well, the attorney general about 6 months ago convened the so-called, what we call the Organized Crime Council. And as a result of that, she insisted on the Department components in particular coming up with a renewed, reinvigorated effort against organized crime and just within the last 60 days she has been presented with such a plan and it is being put in operation.

So I think we are fairly well coordinated, not perfect, Mrs. Morella, but I think it's pretty good.

Mrs. MORELLA. Would you agree, Mr. Inspector General Masten?

Mr. MASTEN. Yes, I would. In fact, I was making sure that my statement would be correct. Most of our major cases that we are working with the Office of Labor Racketeering, we work in conjunction with the FBI because of the resources and because of the complexity of those cases. So there is a coordinated approach on addressing these.

Mr. KEENEY. I might point out that the inspector general is a former FBI supervisor so he knows the FBI as well as knows the IG office.

Mr. MASTEN. The best of two worlds.

Mrs. MORELLA. Well, you know that the full committee, Government Reform and Oversight, next Wednesday is going to have testimony by the FBI on another facet in terms of records, how records are kept, how they get where they get.

Mr. MASTEN. You would be surprised. I have worked in that unit also.

Mrs. MORELLA. Thank you. Thank you, Mr. Chairman.

Mr. SHAYS. I haven't yet asked my questions and I would like to, then we are going to go to a second round. I don't anticipate a lot of other Members will come back, so I am going to recess the committee. We are going to vote because we have a vote now. We will come back, I will ask my questions, and then Mr. Souder may have some more and Mr. Towns and others.

It may take about 15 minutes or so for us to vote and come back here. We are at recess.

[Recess.]

Mr. SHAYS. Why don't we start. I'll probably botch up his name anyway. Mr. Cossu.

Mr. COSSU. Cossu.

Mr. SHAYS. When I was in college, I did a major paper on organized crime and it has always been an issue that has fascinated me. And organized crime is in labor, it's in management, it is everywhere we look. The concept of organized crime, as you would define it, both gentlemen, would be what? What makes something organized crime versus just crime?

Mr. KEENEY. I would define it as a group of individuals gathered together to, by legal and illegal means of generating money.

Mr. SHAYS. Conspiring together?

Mr. KEENEY. Yes.

Mr. MASTEN. As opposed to the one-time criminal who embezzles money from the bookkeeper and is caught on his or her own.

Mr. KEENEY. It is a permanent type of organization. Chuck is right.

Mr. SHAYS. But the concept is that it is a permanent one?

Mr. KEENEY. Yes.

Mr. MASTEN. Yes.

Mr. SHAYS. Your focus is organized crime as it relates to labor unions. That is your responsibility. You don't get into issues dealing with management unless it is related to labor unions? Maybe you need to just clarify this because, obviously, if someone is raiding pension funds, whether it is labor or management, that is your jurisdiction.

Mr. KEENEY. Well, as far as the Justice Department is concerned, the Criminal Division, we are interested and get into organized crime, whether it is in labor or where it is.

Mr. SHAYS. But your particular focus is——

Mr. MASTEN. The racketeering side.

Mr. SHAYS. I just want to discuss this with Mr. Keeney.

Mr. MASTEN. Sorry.

Mr. SHAYS. Your particular focus is with labor, or organized crime in general?

Mr. KEENEY. Organized crime in general.

Mr. SHAYS. Do you divide up the Justice Department into labor and management in terms of dealing with organized crime?

Mr. KEENEY. We have a small unit that specializes in labor-related crimes. And because the criminal labor laws are a little complicated, we provide a great deal of advice, legal advice, to the various U.S. attorneys with respect to the labor statues.

Mr. SHAYS. But the bottom line is that, in the end, it is prosecuted by your U.S. attorneys State by State or district by district?

Mr. KEENEY. Primarily by the strike forces, who have a history of being connected with the Department but 7 or 8 years ago they became part of the U.S. attorneys offices in the various districts. But they still have a very close relationship with our Organized Crime and Racketeering Section.

Just as an example, the primary statute that we use—it has been referred to here a couple times, the RICO statute, which is a very powerful Federal statute. All of the prosecutions in that area have to be approved by our Organized Crime and Racketeering Section, the reason being is that it is such an effective and powerful statute that we want to maintain tight control over it so that the courts don't cut back on it and reduce our effectiveness.

Mr. SHAYS. It is a very effective statute.

Mr. KEENEY. Absolutely, yes.

Mr. SHAYS. Both in management and labor, wherever you see organized crime.

Mr. KEENEY. Yes; and you can use it across the board. You can use it in respect to a securities fraud scheme if it met the enterprise definition.

Mr. SHAYS. Now, you have different organizations that will complain, be they union or management. You can have two people in a very large organization that could be involved in organized crime and, potentially, the whole organization can be held liable under the statute. Is that correct?

Mr. KEENEY. Well, potentially, but I would like to think that on that particular set of facts that we would not go against the whole organization unless we found, first, that the organization was benefiting substantially and that they had some knowledge or some general awareness of what was going on and didn't do anything.

Mr. SHAYS. It is kind of a side question, but the point is that I periodically hear people who will come to me and talk about the potential misuse of the statute. It leaves a lot to the judgment of the Justice Department as to how they prosecute and who they go after.

Mr. KEENEY. Right.

Mr. SHAYS. I just wanted to put that on the record.

Mr. Masten, when I also was in college from 1964 to 1968, you know, at the very center of going after organized crime was Robert Kennedy, a Democrat. And it was something that took the notice of a lot of people because, frankly, you had a Democrat really focused in on corruption, organized corruption, with unions.

And is the nucleus of a lot of what we are doing emanating from what Mr. Kennedy, Robert Kennedy, undertook with others? I mean, he was the counsel for the committee work?

Mr. KEENEY. For the committee, yes. The Senate committee, yes.

Mr. SHAYS. We have five departments that we oversee and a whole host of agencies, and the inspectors general have the power to go after waste, fraud, and abuse internally. But we have given you the authority to go at it externally as well; is that correct?

Mr. MASTEN. That is correct. And I believe that I am the only OIG that has the responsibility, but we got that responsibility because the Justice and the strike force saw fit that the Office of Labor Racketeering, which was attached to the Department of Labor before 1978 needed to be totally independent. And that is the reason it was assigned to the OIG in 1978.

Mr. SHAYS. You don't think there is a parallel with HHS and their ability to go after Medicare and Medicaid fraud? I was asking my counsel that question. But you truly think that your office is unique in that aspect, that you have the right to go after organized crime externally?

Mr. MASTEN. As it relates to the unions, yes.

Mr. SHAYS. OK. Not as it relates to management?

Mr. MASTEN. Yes.

Mr. SHAYS. So as it relates to management as well?

Mr. MASTEN. Right.

Mr. SHAYS. OK. Anything that Labor Department touches that you can oversee, you can go after the external crime that you see?

Mr. MASTEN. Yes.

Mr. SHAYS. What I am trying to get a sense of is when you—give me a sense of where your power ends and where Justice's begins, or how the two—and let me just say I appreciate the Department of Justice being here because we oversee the Department of Labor and it is helpful, Mr. Keeney, to have you here to help us put into perspective where one begins and one ends.

Is it a clear line of definition? Do you go to a certain point and then say, here, Justice?

Mr. MASTEN. We work very, very closely with Justice with all of our Office of Labor Racketeering cases. I mean, the strike force is still an integral part. We are part of that group addressing this issue.

Mr. SHAYS. But it is your inspectors that are—give me a sense of—I just want to put on the record what type of coordination we are talking about. Describe a case that would be a good example. It can even be a theoretical case. Well, actually, no, you can describe a case.

Mr. MASTEN. Let's suppose we get an allegation that there is some corruption in a specific union, in a very specific union. We would take that information and go to the strike force attorney in that region, provide that information to the strike force attorney.

The strike force attorney will assess that information and say, OK, I believe this is a case that will have prosecutive merit; go ahead and investigate it and get back to me.

Mr. SHAYS. So Justice basically has to weigh in first on whether the resources of your department should be utilized? I want to be clear on this and I don't want to be glib or casual on this. You do some initial work, and no one can prevent you from investigating anything?

Mr. MASTEN. Right, no one can prevent the OIG from investigations of any sort. Once we do certain types of investigations, we would get them to the strike force as it relates to labor racketeering early on to see if that case has prosecutive merit because we don't want to waste a lot of time and resources.

Mr. SHAYS. But the bottom line is, I understand you would not want to waste time. I am interrupting you here, but the bottom line to this is that you could spend as much time as you feel is necessary, and your personnel, to establish whether you wanted to go to the Justice Department, the strike force, to recommend something? In other words, you have the ability to keep looking if you think there is merit to look without the Justice Department saying don't get into this?

Mr. MASTEN. Once we present the case to the strike force and they say this case doesn't have any merit, we are not going to expend any more resources.

Mr. SHAYS. But that is your judgment, though?

Mr. MASTEN. Yes, that is our judgment.

Mr. SHAYS. And I want to establish that. The point is you don't have to go to Justice until you think you've got a good case to present to them, and there are some times you may not go to the strike force because you look at the results and you say, you know, I'm not interested in pursuing this matter. Is that correct?

Mr. MASTEN. No, that is not correct. If we have a case involving a racketeering issue that the strike force is a partner with us on, we will present that case to that strike force early on because we don't want to waste resources. We want to get their involvement. It goes back to that coordination I was talking about early on. It is an integral part of doing this.

Mr. SHAYS. It may seem like I am beating a dead horse here but, no, but the point is you have to establish a certain level of interest before you go to the strike force? And people are nodding their heads behind you so I am going to assume that you've just answered.

Mr. MASTEN. I don't have eyes behind my head but I keep telling you yes.

Mr. SHAYS. Mr. Cossu, with the power invested in me, I want you to feel like you can interrupt your boss any time.

Mr. COSSU. Mr. Chairman, maybe I could make it even more clear. What we have tried to do in the Department of Labor and the Office of Labor Racketeering in the last, at least, 5 years is to initially bring the investigations into the Organized Crime/Strike Force unit. We understand that our role is in a very small arena, an arena dealing with unions and employee benefit plans and the management of those companies that run those—the contractors that affect those plans.

By us bringing the investigation into the strike force unit, it gives them, it gives the U.S. attorneys offices an opportunity to look at the merit of our case and whether or not it fits a much broader program in their district as it deals with organized crime elements, much more patterns of corruption involving employee benefit plans.

So it is not just a parochial view that we are taking. We are bringing it in so that the Justice Department can look to see whether or not there is the basis even to expand on that investigation into a much larger arena.

Mr. SHAYS. Mr. Cossu, this is your primary responsibility. Mr. Masten, you have to become an expert on everything that your Department does, but going after corruption in labor unions becomes your responsibility, Mr. Cossu?

Mr. COSSU. That's correct, Mr. Chairman.

Mr. SHAYS. So let me just focus in with you then for a moment. Has there been any case that you have referred to the Justice Department since 1990, that comes to mind where you really felt that more resources and effort should have been expended and where you were just simply told no, there is no merit here; don't continue? And I would think that could happen. If so, what would be those cases?

Mr. COSSU. Offhand, I can't think of any specific case. But on a daily basis there are cases in which the investigations or the investigative unit within the Office of Labor Racketeering in that region would present to the U.S. attorney or the assistant U.S. attorney and a decision process would be made by both the supervising agent and the U.S. attorney as to which are the best that could be approached at this time. And the resources are then determined as to when the initiation of the case will begin and at what steps we are going to expand it.

I don't think we have ever presented a case where the Justice Department has slammed the door in our face as they go away. You know, we're not looking in this area. That has never been the case.

Mr. SHAYS. So they may say we need more information or we don't think this is a very good case?

Mr. COSSU. Exactly.

Mr. SHAYS. But where they have, for the most part, you have agreed with their decision?

Mr. COSSU. Yes; I think there is often, you know, every investigator believes that his case is the best in the world. You know, we bring it before the U.S. attorneys office and, legitimately, they have a substantial inventory of investigations and they have to put it in perspective.

And it may need some additional investigative merit or effort, and we take a back step, go in, do the examination, and then make again another presentation. But there have been very few instances, and I can't remember any, where they have literally said we are not getting in that direction.

Mr. KEENEY. Mr. Chairman, may I add in?

Mr. SHAYS. Yes; Mr. Keeney.

Mr. KEENEY. The occasions are not that frequent where there is disagreement but if, in fact, there seems to be a pattern of dis-

agreement whereby the agency—it doesn't have to be Labor—believes that the particular U.S. attorneys office is not being responsive and not being effective, that agency will come to the Department of Justice and we will look into it. I don't know that we have had that situation.

Mr. MASTEN. We have not. Mr. Chairman, I can agree with that wholeheartedly. That is not just with the Office of Labor Racketeering. That is with the FBI as well as any other agency. And that is where I would get involved if that was the case that an investigator was turned down on a repeated basis. I would have to go to the strike force as the head of the entity to address that issue.

Mr. SHAYS. If a case was turned down, would it be because you simply did not feel there was much merit to the case or because there was merit but not the resources?

Mr. KEENEY. Well, it could be either one of them. I would hope that, for the most part, it wouldn't be resources. If a case had a great deal of merit, I would hope that we would be able to find the resources to prosecute it.

Mr. SHAYS. But this is not an idle question here because if, in fact, it is resources, that is one issue. If, in fact, there is not real merit to the case, that is another. And it would lead us to two different conclusions. We are going to try to see how we deal with resource issues because, not allowing an inspector and others to begin to look at issues and not taking on cases because you simply don't have the resources is one thing.

Once you've started it and you've said, my gosh, there is really something here and you go to Justice, that is another issue. I mean, the outcome may be the same. I mean, we may not be investigating cases we should be that are really pretty terrible. But I would like to think that at least the cases that we do investigate, that we are able to pursue those.

And so I am going to ask the question again. One question may be, is it your testimony before, Mr. Masten, and then I am going to go to Mr. Souder because he has some questions, Mr. Green, that relate to maybe a question you had and you may want to followup with that.

The question I first want to ask you is, it is your testimony before this committee that if you had some of the resources you have had in the past you would be able to do 100 more cases a year? Is that your testimony?

Mr. MASTEN. That is my testimony. If I had the number of agents that I have had in the past, I would be able to do 100 more cases. And that is as a result of being cut about 20 or 21 agents in that period of time.

Mr. SHAYS. How many agents?

Mr. MASTEN. Twenty or twenty-one.

Mr. SHAYS. So you are saying, basically, an agent can handle five cases a year?

Mr. MASTEN. This is with the Office of Labor Racketeering we are talking about. These cases are very complex and the average, the average caseload for an agent is about five.

Mr. SHAYS. I understand. I am not passing judgment. If you had those 20 more agents you would be able to do 100 more cases?

Mr. MASTEN. That is correct.

Mr. SHAYS. And those 100 cases now are not being looked at?

Mr. MASTEN. That is correct.

Mr. SHAYS. In the cases that you do look into and you think there is merit, when you go to the Justice Department is the argument—I realize there is always a fine line and a combination of factors. But is the argument primarily that we don't think the case has merit, that there is not enough here that draws us to feel that we should prosecute, or is it that, there are some things here that trouble us but we simply, given our resources at Justice, don't think we should pursue it?

Mr. MASTEN. That is the latter position in the case. We don't want to pursue it at this time until the resources or some other time when that case will take a different priority.

Mr. SHAYS. Does that happen more often or less often? Which is it?

Mr. MASTEN. I will defer to Mr. Cossu.

Mr. COSSU. Mr. Chairman, I think Justice has also felt the effect of the downsizing and the economic deficiencies that the budget has been leveled on all of the other investigative agencies. It is increasing. It may not have been the case years ago, but it is steadily increasing where they have to prioritize their resources.

Let me just——

Mr. SHAYS. I want to make sure though that I hear what you are saying but I want you to be a little more specific, and then I am going to give the floor to Mr. Souder. I just want to know are most cases that you don't—well, let me ask you this. Of the cases you refer, how many are taken up by Justice Department?

Mr. COSSU. I would say the majority are in such a situation, and Mr. Keeney would be better——

Mr. SHAYS. The majority is even a little too vague for me. I mean, because I'm not in your office. Is it 1 out of 10 that make it? By the time you take it to Justice, are you so convinced that there is a case that you are convinced Justice is going to accept it? And if Justice decides not to, does it kind of say, oh, my gosh, we are surprised because it doesn't happen that often? Give me a sense.

Mr. COSSU. I wanted to clarify maybe the process in which we develop a case. Generally speaking, we are extremely selective. I mean, we are looking at the—we target investigations based on the most egregious offenses that occur and, also, we are looking for the best impact. I mean, we have limited resources.

So by the time we have collected this criteria, we develop it, we, to a certain degree, prove that the elements exist to promote a prosecution, at that time that case is being presented, the large majority, very few instances, is Justice saying they are not interested or they don't have the time to service us.

Mr. SHAYS. It would be your testimony by the time you present it to Justice you have had to convince yourself, among all the choices you have, that this one is a case they should do and are pretty confident that they are going to take it on?

Mr. COSSU. That's correct.

Mr. SHAYS. Would you agree with that, Mr. Keeney?

Mr. KEENEY. Most of the cases when they have gone through and investigated, you know, to an extent that they are satisfied that

there is something there, yes. But, Mr. Shays, there are occasions when IG's and other investigative agencies come to a prosecutor at an early stage and say we've got this allegation and what do you think about it? And they say it's an embezzlement of, say, $400. The assistant might say right off that, no, compared to the usual cases that is de minimis and we would not prosecute.

Mr. SHAYS. And I understand that there are going to be cases that even the IG is not going to go after because in the realm of things, a politician could come in and look at what you decided not to go after and criticize you, but in the relative value it didn't make sense for you to pursue it because maybe you couldn't prove it even though it looked bad. And so I understand that.

I want to put a number next to this. Is it 7 out of 10, 8 out of 10, 9 out of 10 times that Justice takes a case? And I understand while you were under oath that this is a judgment call and I respect that, but I just want to put it—or is it 5 out of 10? I want to get a sense.

Mr. COSSU. Mr. Chairman, I would say it was closer to 9 out of 10 times.

Mr. MASTEN. And the reason for that, Mr. Chairman, if I may add just one comment, the experience level of the agents in our Office of Labor Racketeering is very, very, very high. Most of the people were hired with more than 10 years' experience when they came into that entity. So the cases that they are investigating and the expertise level that they have, when they present the case they know pretty well what they are doing.

Mr. SHAYS. Thank you. Mr. Souder has some questions. Mr. Green may want to followup. Mr. Towns may as well. I want to get into one other area, and I will just tell you now. I want to get into the whole issue of coordination which was the thrust of your report, and then we will be done and we can go on to the next panel.

Mr. Souder.

Mr. SOUDER. To prolong your questioning just a minute because it is a little similar to what I had, because the core fundamental question here is how much does a shortage of funds and the reducing of funds impact your ability to investigate crime, and at what level? I mean, if it is $400 cases that we are losing, if it is cases that really are allegations with no proof, that is one thing.

But if we are saying that there is—so then funding of the Department is not as critical a question. If there are cases that affect your pre-screening, in other words, they may take 90 percent but you are screening so much off because you know they are short of funds, and these cases, in fact, may mean a lot of union members, pension funds, are getting ripped off, whether it is in combination with management or not, all sorts of other types of things, that is a fairly serious matter in this country that there is more racketeering going on.

And as Congress that funds that, part of our oversight function is to say are you short of funds or aren't you short of funds? And if you are short of funds, what do you mean by you can't pursue some of these cases? Is this something major that we should be worrying about protecting people, or is this just a minor thing that you would like to have more attorneys in your office? And I'm not a big fan of attorneys.

Mr. MASTEN. The $400 example is an example to give you an idea of a case that they just simply would not take. When I say you need more resources in order to address these cases, No. 1, we have to prioritize what we are doing now, which means there are some areas that are very, very important, much more significant than a $400 case, that we are just simply not addressing because we don't have the resources.

No. 2, in order to come up with areas of concern of vulnerabilities, we have to develop an intelligence base. You need agents to do that, to go out and develop this intelligence base. If you don't have the resources, you put that intelligence base on the back burner; therefore, you don't identify areas that are being ripped off. Those are examples where more resources could be put at better use.

Mr. SOUDER. That will help because you are saying that the Justice Department takes approximately 90 percent of the cases, but you don't know for sure? You feel there is a lot of cases that could be researched more if you had the ability and if you knew they could follow through and, therefore, it would be worthwhile to pursue?

Mr. MASTEN. Right. If I may make another statement, we talk about the traditional LCN getting involved with the unions, and now we have found that the nontraditional organized crime individuals or gangs are getting involved in the unions. Right now, we don't have the resources to adequately address that. We don't know about the membership. We haven't been able to identify enough intelligence to bring us up to speed on that. That is where resources can be applied.

Mr. SOUDER. Well, that is a whole other—gangs and that relationship is a whole other question. But let me come back to—I have been trying to piece together here after Mr. Green raised earlier the voluntary compliance is—LIUNA, is that the Laborers International?

Mr. KEENEY. Laborers International, yes.

Mr. SOUDER. And that is the one that has been the controversial one where, how do you say the man's name, Coia is the head of?

Mr. KEENEY. Coia.

Mr. SOUDER. I have some process questions to ask first, and this will be Mr. Keeney mostly I am asking to but if anybody else wants to jump in, you can. In Time Magazine just a few weeks ago, June 24, it went back and forth with some of the controversy. And one of the controversies is that the high caliber of the FBI agents that have been hired by the union, including Robert Luskin, former Federal organized crime prosecutor, Douglas Gow, I think it is, formerly the No. 2 man at the FBI, and many other former agents.

Is that typical in these kind of cases; in other words, how frequently when you are pursuing these cases are you actually, in effect, competing with former high ranking Justice Department and FBI officials?

Mr. KEENEY. We are not competing with them.

Mr. SOUDER. You are saying they aren't paid by the union?

Mr. KEENEY. These are people who were hired by the union pursuant to an agreement with the Department of Justice.

Mr. SOUDER. Can I clarify? So they weren't working for the union prior to the voluntary compliance agreement?

Mr. KEENEY. No; they were not.

Mr. SOUDER. So they are former agents who are now employed——

Mr. KEENEY. Luskin, who is a former prosecutor, had an association with LIUNA but the others, Gow, et al., no.

Mr. SOUDER. So Luskin had a relationship but the FBI people didn't have a previous relationship?

Mr. KEENEY. That's correct.

Mr. SOUDER. And is it in pursuing that type of question, one of the core, fundamental debates here is that given the level of the allegations against Mr. Coia, even the judge in Chicago, the U.S. District Court judge, said here is a man, the president of the union, who is being accused of being associated with organized crime, the focus of a 212-page complaint, why wasn't he removed?

Why, in a voluntary compliance agreement, and now you have these people, in effect, reporting to. I mean, do they report to the union if the union pays it? Who do they report to?

Mr. KEENEY. The union pays them but we have—they report to us, too, Mr. Souder. And the agreement is——

Mr. SOUDER. Did you say two? They report to both of you?

Mr. KEENEY. Yes; they report to Luskin, who has a supervisory role.

Mr. SHAYS. Would the gentleman please yield a moment? I just really want to clarify one point because I am a little confused. The bottom line, this is an agreement between the Government and the unions themselves.

Mr. KEENEY. Yes.

Mr. SHAYS. They are not solely working for the union; they are paid by the union but they are working in conjunction with the Government agreement. Is that correct?

Mr. KEENEY. Yes.

Mr. SHAYS. In an effort to clean up the union?

Mr. KEENEY. Yes; and I have to go on and explain a little.

Mr. SHAYS. OK, please.

Mr. KEENEY. We have reserved the right, and we do it too, to monitor what these 25 or 26 former FBI agents are doing. If we are not satisfied that they are pursing the internal investigations vigorously, we have the so-called hammer; we can go in and get that court order tomorrow. And I have that personally at my discretion as acting assistant attorney general. I can file that tomorrow with the court if I am not satisfied that they are proceeding with a degree of expedition.

Mr. SOUDER. Do they supply all the information they are developing for you to Mr. Coia as well?

Mr. KEENEY. Supposedly, our people are monitoring them closely. And matter of fact, our people are pretty critical at times and tell them you've got to do this, this, and this. And so far, they have been doing it.

Mr. SOUDER. When you say they monitor them, do they supply the information to Mr. Coia and it is monitored, or do they not supply the information to him?

Mr. KEENEY. They are not supposed to supply information to Mr. Coia. They supply the information to Mr. Luskin, who is a LIUNA appointed official for enforcement at this point.

Mr. SOUDER. So Luskin could take it to Mr. Coia?

Mr. KEENEY. He gets the information. Presumably, he does not pass it on to Coia.

Mr. TOWNS. Will the gentleman yield just 1 second? I want to just clear up one thing. As I understand it, that this is actually a great help because the unions are actually paying the fee for service.

Mr. KEENEY. They are paying the people who are investigating the affairs of the union, yes.

Mr. TOWNS. Right. Go ahead.

Mr. KEENEY. And we have a—we monitor that and we, according to the agreement, if they are not doing what we think is an effective and an efficient job, we tell them. And if they don't do anything about it, we will file the consent decree with the court.

Mr. TOWNS. So, actually, as far as we are concerned in terms of, we are saving resources as a result of this arrangement.

Mr. KEENEY. We are saving the resources. And, also, Mr. Towns, we reserve the right to conduct our own investigations. The Labor Department can conduct whatever investigations they deem appropriate with respect to LIUNA. The FBI can do the same, and any other agency. So there is no restriction. There is no immunity granted to anybody on this.

Mr. TOWNS. Right. I yield back.

Mr. SOUDER. I assume we will continue to have some give and take. Do you have a question?

Mr. GREEN. I just wanted to make a comparison.

Mr. SHAYS. I am going to just make one request. The one thing I do want to do, I want to use this more as a case issue rather than focus on a particular individual, only because the individuals involved are here. So that is my interest, if I could.

Mr. GREEN. Following up just briefly, the way I understand it, for example, with the laborers, they are paying for it and you have a consent decree or you have, you know, an agreement, but with the Teamsters the elections and everything else and are actually paid for by appropriations since it is overseen by the Federal court and the Department of Labor is actually paying for a lot of things that the union in the laborers case are paying for. Is that correct?

Mr. KEENEY. Can I have that again, Mr. Green? You've lost me.

Mr. GREEN. In the case of LIUNA, the laborers, they are paying these former FBI agents and the investigation but if you had gone to court and got a direct Federal court oversee, similar to the Teamsters, we would be using Federal funds to do what the laborers are now paying for those investigators?

Mr. KEENEY. Excuse me, can I consult my staff?

Mr. GREEN. Mr. Souder, that's all I wanted. If they are actually saving resources and they can use it on another investigation, that is what I was heading for.

Mr. KEENEY. Mr. Green, my colleague just reminded me in the Teamster situation, the Teamsters are paying everything except with respect to some election costs, which the Government is picking up. The Government has put in a system, or the monitor, Judge

Lacey, has put in and his colleagues have put in a system to guarantee, or try to guarantee, a pure election. And the Government is paying some of the cost of that.

Mr. GREEN. OK. But in the laborers case, the Government is not paying any of the cost on the requirements for the laborers, for example, to have direct election of the president?

Mr. KEENEY. That's right. The union is paying it all.

Mr. GREEN. And what Mr. Souder was saying is that if you had made the decision to go to court similar to the Teamsters, we would be paying more tax dollars instead of the union paying their resources?

Mr. KEENEY. Well, I'm not sure of that, Mr. Green. I think it would be the same as with respect to the Teamsters, that the bulk of the cost would be on the labor union pursuant to court order.

Mr. GREEN. Thank you. Thank you, Mr. Souder, for your courtesy.

Mr. SHAYS. We are going to let you develop your thought.

Mr. SOUDER. What I am trying to sort out, obviously, this is a politically potent topic. And I am trying not to get into the political side of it and both keep specific and related to generally voluntary compliance. But this is very explosive because, as the judge said, and we kind of got off there for a second.

I mean, if this was a business case where the allegations were made that it was organized crime and the person in charge of the company, who himself has allegations and his father have allegations against him and was left there, and if a man who was formerly tied to that union was left in a situation where he continues to have access to the internal investigations, it sets up the appearance of difficulty. And that is what I am trying to sort out here.

Mr. KEENEY. Theoretically, he does not have access. Unless, you know, we are being deceived, he does not have access to the investigations.

Mr. SOUDER. So, in other words, you are confident that Luskin doesn't share the information?

Mr. KEENEY. I am, yes. I can't guarantee it but I am confident that he doesn't.

Mr. SOUDER. And am I correct to understand that the information from the FBI agents goes only to you in the Justice Department and to Luskin?

Mr. KEENEY. Luskin and when they bring an action there is another Department, a former Department of Justice official who is a hearing officer. The information goes to him if they want to prosecute.

Mr. SOUDER. Does Luskin view himself predominantly part of your investigation or predominantly representing the union?

Mr. KEENEY. Luskin?

Mr. SOUDER. Yes.

Mr. KEENEY. He has a function under the agreement where, in effect, he is working for us.

Mr. SOUDER. Does he work full time for you or is he working——

Mr. KEENEY. I don't think he works full time, no.

Mr. SOUDER. Does he do other union work in addition to this for them now currently?

Mr. KEENEY. I don't know the answer to that, Mr. Souder.

Mr. SOUDER. We should ask him those questions. But is it typical in a voluntary compliance agreement where there are this many charges about the head of the union that the head of the union or any organized crime organization, any organization alleged to be under that much influence of organized crime, would be left in his position? Why would that decision be made?

Mr. KEENEY. Well, it's not a question of being left. You know, if we file the consent decree tomorrow, we would have to prove that under the civil RICO statute that the officers that we thought should be removed, we would have to demonstrate and meet the burden of proof to have them removed.

Mr. SOUDER. In other words, you don't, in a voluntary compliance agreement, have leverage for, as yet not completely proven allegations where you can ask for the removal of something in return for having a voluntary as opposed to a court-imposed agreement. In other words, you couldn't have removed him without having a court order?

Mr. KEENEY. Mr. Souder.

Mr. SOUDER. Let me phrase it another way.

Mr. KEENEY. You are pushing me pretty hard with respect to what I consider an active, open investigation.

Mr. SOUDER. OK.

Mr. KEENEY. We've got the rights of individuals involved here and I would like not to get into it.

Mr. SOUDER. OK, I will retreat on that question. I am sure it will unfold more as we go. There was also a statement in this article. Does the prosecutor Paul Coffey, does he report through you?

Mr. KEENEY. He does.

Mr. SOUDER. There is a statement it is not a crime to be controlled by the mob. Is that correct? That kind of intrigued me.

Mr. KEENEY. It's not a crime, but being controlled by the mob might be a basis for removal of a union official under the RICO statute. But it is not a crime as such. You don't go to jail for it.

Mr. SOUDER. Because it would be the actions of being controlled that we have to establish.

Mr. KEENEY. Yes.

Mr. SOUDER. I am trying to figure out how to make this a general question so I don't get the—one allegation in the Time article is that since the agreement that the critics of the case point out that one gentleman in the New York branch who is identified with the Cosa Nostra in the original complaint was promoted to be treasurer of the New York regional PAC.

Now, my question here, to make it general rather than specific, if you want, the name of the person is Salvatore Lanza and, once again, I am saying is alleged in the original complaint. I am not saying he is.

Mr. KEENEY. Is this the original complaint in what? The Teamsters?

Mr. SOUDER. This is a Time Magazine quote. "Identified with the Cosa Nostra in the original complaint." And that was promoted. Now, my generic question here is when you do compliance when you are investigating these organizations, what action would it take? I mean, would that not be a red flag?

Mr. KEENEY. The fact that he was——

Mr. SOUDER. That somebody was promoted who was signed in your original complaint as being possible part of a mob that you were investigating.

Mr. KEENEY. Well, if we could demonstrate that he was part of the mob and being controlled by the mob, presumably, we would present that evidence to the hearing officer, Mr. Vaira, and seek an order of removal. I am not familiar with this, Mr. Souder. I can only answer in general terms because I am not familiar with this.

Mr. SOUDER. This kind of comes back to a question the chairman was saying before. What does it take to prove somebody?

Mr. KEENEY. There are various ways to prove that somebody is, first, a member of an organized crime group and, second, that the organized crime group is controlling the individual's action as a labor union official. You can have witnesses who demonstrate that, you can demonstrate it by conduct, as it has been demonstrated.

I don't want to talk any more about LIUNA because it is an open case, but that is the way we have done it with respect to the other cases that we have filed and they are pretty much closed cases.

Mr. SOUDER. I thank you for indulging me as far as we pushed the individual case. This is a very explosive issue and I am trying to figure out, because it is also important to us as we look at how in an oversight function, voluntary—I mean, that is what led to my questioning is Mr. Green more or less said that you were happy with the agreement.

And by you going on record saying you were happy with the agreement led me into a series of questions about, well, is that such a good agreement. But I will defer at this point at pushing it because we could get far beyond that.

Can I ask one other question? Since the Justice Department goes on record that they were happy with the agreement and the District Court judge questioned the agreement, Mr. Masten, do you have any opinions on the agreement? Do you get involved when there is a voluntary compliance agreement?

Mr. MASTEN. No; that decision is up to Justice. We do the investigation, present the fact to them. They make the determination.

Mr. SOUDER. So once you pass off the investigation do you continue to give opinions in?

Mr. MASTEN. No; we pass off the information to Justice and Justice renders it.

Mr. SOUDER. Then you are completely out of the process?

Mr. MASTEN. Yes.

Mr. SOUDER. Thank you. I yield back.

Mr. SHAYS. Mr. Green, do you have any question that you want to follow up on?

Mr. GREEN. Yes; I would like to follow-up. In fact, I am glad my colleague brought up that New York Times article. If you could pass a copy down, because I remember reading it. And I am glad we have the experts here today to talk about it because, after reading this article, inasmuch as I like the Times and Newsweek and U.S. News, I oftentimes find that they may not have the whole story when they print it. And so I don't know if I would assume that what they say in there is correct because, again, you are the experts that oversee it.

Let me give an example of—and Mr. Souder said that, for example, Mr. Luskin and the relationship to the president of the laborers, would that be similar to Mr. Masten and Secretary Reich? Mr. Masten has a job to do and he is going to do that job, even though Secretary Reich is, obviously, the Secretary of Labor and overseeing. He doesn't sign your checks any more than Speaker Gingrich signs ours, but you obviously have your job to do just like Mr. Luskin has, as compared to Mr. Coia.

Is that a good comparison?

Mr. KEENEY. Well, it's not a good comparison in the sense that Luskin had a former association with this individual. But in his present capacity, his loyalties and his obligations are to the Department of Justice pursuant to the agreement we signed with the union.

Mr. GREEN. And how long has this agreement been in place?

Mr. KEENEY. February 1995.

Mr. GREEN. OK. So over a year?

Mr. KEENEY. Over a year.

Mr. GREEN. And during that year and 3 months, your testimony earlier is that you are completely satisfied with the effort and the oversight?

Mr. KEENEY. Well, Mr. Green, I am never completely satisfied, but I am satisfied that in the present posture, as of today, it is in the interest of the Government to continue that voluntary agreement. Nothing is perfect. We have disputes with them and we have pushed them to the wall when they were not doing things as quickly as we wanted done but, overall, I am satisfied with it, yes.

Mr. GREEN. And let me also, and this is for the whole panel, in my earlier life I did practice a little law and I never met an investigator, whether it be for the police department or the sheriff or anyone else, who didn't have the greatest cases.

But I also met lots of district attorneys and county attorneys who had the ability, and U.S. attorneys, to say this case is not developed, this case does not meet the requirements that we have. And that happens in every prosecution, whether it be someone stopped for a traffic ticket or anything else, as well as for labor racketeering.

Is that correct, that you may have investigators bring information to you that may not be as developed or have the information that you need?

Mr. KEENEY. That happens, yes.

Mr. GREEN. And that happens, again, like——

Mr. KEENEY. Well, I am not commenting on Labor. I think Labor does a pretty good job of developing them before they bring them to us. But, yes, the answer is yes, we do get cases that we don't think are worthy of prosecution, worthy of expending resources on.

And as I mentioned earlier, some investigative agencies come to the prosecutor at a very early stage, and we do not discourage that, so that they can get a feel for the prosecutor's attitude with respect to the prosecutability of the particular violation.

Mr. COSSU. Congressman, if I may just address that, I think a clarification. The Office of Labor Racketeering is not one that waits for a complaint to come through the door. A substantial portion of our cases are proactive.

We are looking to target individuals who have had the most corrupt influence, be it on a union or an employee benefit plan, service providers to the union and employee benefit plans. That makes the difference when we develop that information. We have got a focus initially as we set out on that path.

Mr. GREEN. Mr. Chairman, I know we got a little bit off and maybe outside jurisdiction of our committee, but I appreciate it and I would like to yield whatever time I could.

Mr. TOWNS. I'll just take a minute. I just want to make a comment, basically. Mr. Souder, I have great respect for you and you have worked very hard on this committee and I want you to know that I respect that very, very much. But I would like to caution you. You can't believe everything you read. I want you to know that.

Accusations are always made, and I'm certain you being involved in the political arena, you have heard a lot of things about you that wasn't true. So I think that when we read, we have to read with an open mind. So I just want to just caution you on that part and to say to you that I have had a chance now to read this article and I think that we have to read it with great caution and not put a whole lot of credence in it because I think, if we do, we make mistakes and do a lot of things that could be very damaging that should not be done.

So I would just like to caution you on that part, being a person that has been around here for a long time and seen a lot of things and been involved in a lot of political campaigns.

Mr. SOUDER. Will the gentleman yield for a minute?

Mr. TOWNS. I don't have the time. I wish I did.

Mr. GREEN. I'll be glad to do it.

Mr. SOUDER. That I initially didn't name the person and I was trying to do that out of identification. And I also said it was from the critics allegation to the case. I also said that I didn't know even, because I read it directly, what case it was referring to. But the person involved, at least according to the article, is named in the original suit.

But I agree with you, and that is why I tried to qualify so much. I don't know the particulars of it. What I was trying to get to is whether or not when, if people are promoted inside the system and he said it was too much inside the case and so I backed off my line of questioning. And I didn't mean to get the individual.

Mr. SHAYS. If I could take the floor here, the question that Mr. Souder raises, a generic issue for me is when a union is investigating itself, who has the right to that information? It is paid for by the union. If these FBI agents and others doing the investigation uncover some wrongdoing, do they have a legal obligation or a moral obligation to come to Justice, or do they have no obligation?

Mr. KEENEY. They have an obligation to come to Justice and then report it. That is part of the agreement.

Mr. SHAYS. But the only question that could come, because you didn't answer with total certainty, that if it is an internal investigation in which you have an agreement to allow, that would people within the union potentially who are being investigated have access to that information? Your answer was a somewhat no but,

I mean, but you can't answer for certain; is that correct? And I am not referring even to this issue. I am just referring in general.

Mr. KEENEY. Mr. Chairman, they should not have access to the information. To my knowledge, they do not. That is all I can say.

Mr. SHAYS. Right. But the bottom line is that certain people in this investigation may, in fact, have worked for the union before.

Mr. KEENEY. Yes.

Mr. SHAYS. So you don't have a certainty but there is a process and you say it shouldn't happen?

Mr. KEENEY. Right.

Mr. SHAYS. OK, I'll live with that.

Mr. KEENEY. And you started out by saying what is the usual practice. There is no usual practice because this is the first time that we have entered into a voluntary consent agreement.

Mr. SHAYS. OK.

Mr. SOUDER. Can I ask a question?

Mr. SHAYS. Sure.

Mr. SOUDER. This is the first time you have ever entered into a voluntary?

Mr. KEENEY. Right, of this type, yes.

Mr. SOUDER. On what grounds would you have entered for the first time into a voluntary compliance and never have done it before? Was this the only union that has ever wanted to do it?

Mr. KEENEY. The union made this proposition and asked for an opportunity to clean up their own act. And after a lot of discussion back and forth and a lot of safeguards being put into the agreement, we went along with it.

Mr. SOUDER. Has anybody else ever asked for that?

Mr. KEENEY. Well, we entered in with respect to the Hotel and Restaurant Workers, there is actually a court decree but that was developed in a cooperative arrangement with the Department of Justice. It is a little bit different than this because there is a court—the court is now supervising, which they are not in LIUNA.

Mr. SOUDER. Thank you.

Mr. SHAYS. I would like to get to our next panel. They probably thought they would be out by now. I told my staff we would be done at 1 o'clock. What do I know?

Mr. Masten, your office has been looking at criminal enforcement programs at the Department of Labor for almost 5 years. But you had a major report on March 24, 1995, called the "Final Status Report on Efforts to Improve Departmental Criminal Enforcement Programs."

I am going to read the second and third paragraphs. "In summary, although MSHA, OLMS, OSHA, PWBA and WHD have each taken action in response to the enforcement task force and OIG recommendations, as well as the FMFIA." What does that stand for?

Mr. MASTEN. Oh, boy.

Mr. SHAYS. Sorry about that.

Mr. MASTEN. Financial Management——

Mr. SHAYS. Federal Management Financial Integrity Act. "Commitments to and implement these recommendations, most actions have been inadequate to resolve them. The quality and quantity of

agency actions have varied widely." And then you say see attached report.

Then you say, "As of September 1, criminal enforcement activities among the five DOL enforcement agencies remain inconsistent and uncoordinated with no integrated approach to common criminal enforcement issues." And then you proceeded to go through and give pluses or minuses in various categories.

Is it first fair to say that you have a significant concern that you have various units within the Department of Labor that have their own responsibility, but I believe your testimony is that the failure to coordinate doesn't maximize resources or maximize the potential to get at the criminal activities.

Is that a fair characterization of the report?

Mr. MASTEN. Yes. But if I may say too, I believe—and I would have to check with my staff—I believe there was a response to that report where some of the things had been addressed, Mr. Chairman.

Mr. SHAYS. Let me talk to you about the response. There was a response. It was on February 14, 1996, and this is from Thomas Glynn, Final Status Report on Efforts to Improve Department Criminal Enforcement.

These are the things that I find troubling. I am going to read to you some phrases. "As you know, however, the task of developing coordinated departmental criminal enforcement is complicated by the numerous statutes, mandates, and budgetary limitations of the various agencies, as well as the objectives and cultures of each of the agencies."

Further on they also noted that, "Because of the statutory and program differences it would be difficult, time-consuming, and costly for DOL to develop uniform elements of case documentation that can apply to all five agencies." And they give DOL's current resource limitations.

You get the gist of where I am coming from. "For these reasons and in view of DOL's current resource limitations, the Agencies are of the view that this recommendation should not be adopted by DOL. OSHA maintains a manual data system of all prosecutorial referrals which is available upon request by any DOL agency." Finally, the OIG report itself notes that PWBA has implemented this recommendation.

But let me just read to you two more or three more. "While the PWBA, OLMS, and WHD are studying this particular recommendation, MSHA and OSHA have already determined that implementation would not be feasible for their program. I agree that improving the timeliness and effectiveness our enforcement press releases is an important goal, however, that our current process requires improvement. This area is complicated in that it requires effective coordination between the enforcement agency, the Solicitors Office, and the Office of Public Affairs."

You are constantly hearing that these all have different cultures, different responsibilities. And I am a little troubled that you had to ask if there was this response because I wanted to ask you what you thought of the response.

Mr. MASTEN. Well, Mr. Chairman, again, I have so many reports in the back of my mind. I was almost pretty sure that I had gotten a response.

Mr. SHAYS. You got a response on February 14 and, the bottom line is it was disagreeing with a lot of the recommendations.

Mr. MASTEN. Yes. But I said early on in my testimony too that I felt that if there was more coordination between these entities, that we would get the job done better. I made that comment early on and I pointed out some of the things that I thought could be done.

If a decision is made that mandates that coordination be done with these entities from the top down, I think it would be a better approach to addressing some of the common criminal elements.

Mr. SHAYS. Let me ask you, Mr. Cossu, what your response was to it? You've seen this report, their response?

Mr. COSSU. I agree with the comments the IG made, Mr. Chairman. You know, it needs to be addressed from the top down. You know, there is a lack of responsiveness, say, amongst the agencies, at least solicitors and amongst the agencies that were reporting to him. And it is our view that, you know, it has to come from the top down.

Mr. SHAYS. I would like you to pick the top three recommendations that you made which the Department has not agreed to that you disagree with them in their response. If someone else needs to give you a little background, I would be happy to wait a second.

Mr. MASTEN. Mr. Chairman, we do not have a copy of that response. Simply, we came unprepared and I apologize. I could get back to you on the record with it, but I just don't have a copy of that.

Mr. SHAYS. Let me do this: I would like you to get back to us, and since you are going to be getting back to us, I want a full response. I want to see your response to the Department on this. Excuse me. You were not obligated to respond. I need you to respond to the committee where you agree and disagree with the Department of Labor's response to your final report. And from there, we will use that in terms of our own recommendation and study.

I am not going to, given your candidness that you really haven't reviewed this lately, I do know in February you had seen this and have reviewed it. But I need, and the committee needs, more importantly the committee needs, your response to know what we are going to recommend. We are going to recommend.

The purpose of this hearing is not what the AFL–CIO and others have accused, and to which I take strong exception, beyond measure. The purpose of this is but to take a look at your report and to see how the Department of Labor has responded. We also need to know where the Department's responses may be valid. I mean, if they don't have some resources, that may be valid.

If there are other things that we are not aware of, that may be valid and we are going to try to respond. But before we do our report to the full committee and to Congress, we need your response to this February 14 response to your report.

Mr. MASTEN. I'll get it back to you, Mr. Chairman.

Mr. SHAYS. OK. I think all of you have been very responsive to this committee as well as very helpful and patient. Again, Mr. Keeney, we appreciate you being here. You have been very helpful.

Mr. KEENEY. Thank you, Mr. Chairman.

Mr. SHAYS. And Mr. Cossu and Mr. Masten, thank you very much. Would any of you like to just make a closing comment before you go? You certainly earned that right. You had to listen to us long enough.

Mr. COSSU. Not I, sir.

Mr. KEENEY. No.

Mr. MASTEN. No.

Mr. SHAYS. OK. Have a great afternoon. Thank you.

Mr. GREEN. Mr. Chairman, while our panel is leaving, and I know from discussions prior to this that I know there was a briefing by the Laborers International or something, you know, with the committee staff. And I know I wasn't a party to it but I understood there was. And so maybe some of us Members would like to also have that if that is available.

Mr. SHAYS. I'm sorry. To have what?

Mr. GREEN. I understood that the committee staff, the majority staff, was briefed on the testimony by the LIUNA or the laborers.

Mr. SHAYS. Right.

Mr. GREEN. And maybe Mr. Souder and I and other Members would also like to be briefed on that, if that is possible.

Mr. SHAYS. You will be briefed if you want to be. Let me just say to you that I made the decision with the ranking member that we were going to look at the generic issue. And you started to introduce that question and then Mr. Souder started to. And we made a determination that we were not going to have a hearing on a particular union, but we wanted to just understand process. So if you want to get into that issue, you can get into that in terms of a briefing.

Mr. GREEN. And I understand. But since the questions seem like they devoted a great deal of the laborers, you know, it might be better if some of us who weren't maybe up to speed.

Mr. SOUDER. Mr. Chairman.

Mr. GREEN. And I did get a chance to re-read the article and I was just wondering, the quote on it from the Department——

Mr. SHAYS. Mr. Souder, I am going to go to you in a second. I will say this to you: If any of the organizations that we discuss want to come before this committee, a simple request to us and they will, and we would have a hearing. It wouldn't be my recommendation that they do that but if they want to, they are more than welcome.

Mr. SOUDER. Mr. Chairman, maybe we could receive a copy of any internal testimony like we do in some of the other types of things. But unless we see a particular need, I would encourage the other side not to insert a bunch of things in the record. I won't insert a bunch of things in the record because it would probably be best not to get into that. But it would be helpful to see it.

Mr. SHAYS. The one thing we didn't do is we didn't request a deposition of anyone. They came and talked and we decided that was a territory we were not going to devote our resources to. But if you would like to get into it——

Mr. GREEN. Mr. Chairman I just wanted to make sure that we just didn't pick out certain issues that we dealt with. And, again, not in relation to these three witnesses.

Mr. SHAYS. Your request will be honored. And, gentlemen, thank you very much.

Our last panel is Mr. Davitt McAteer, acting Solicitor of Labor, Office of the Solicitor, Department of Labor; John Kotch, Director, Office of Labor-Management Standards, Department of Labor; and Alan Lebowitz, Deputy Assistant Secretary for Programs Operations, Pension and Welfare Benefits Administration, Department of Labor.

I am going to ask you all to stand briefly as we swear you in. And as I said before, everyone who comes before this committee is sworn, including Members of Congress. Would you raise your right hand, please.

[Witnesses sworn.]

Mr. SHAYS. For the record, the three participants have responded in the affirmative, and, Mr. McAteer, I called you first and then Mr. Kotch and Mr. Lebowitz. We will go in that order, and we welcome your testimony. You are free to summarize. You are free to give your whole statement. Lord knows, if you have had to wait this long for us, we are going to listen to whatever you want to tell us.

STATEMENTS OF J. DAVITT McATEER, ACTING SOLICITOR OF LABOR, OFFICE OF THE SOLICITOR, DEPARTMENT OF LABOR; JOHN KOTCH, DIRECTOR, OFFICE OF LABOR-MANAGEMENT STANDARDS, DEPARTMENT OF LABOR; AND ALAN LEBOWITZ, DEPUTY ASSISTANT SECRETARY FOR PROGRAM OPERATIONS, PENSION AND WELFARE BENEFITS ADMINISTRATION, DEPARTMENT OF LABOR

Mr. MCATEER. Thank you, Mr. Chairman. In the interest of time, I will summarize my written statement. I am pleased to be here today as Acting Solicitor of Labor. I have prepared a statement which has been provided to the subcommittee. I ask that that be submitted to the record along with Deputy Secretary Metzler's letter of July 3 to you. With your permission, I will summarize below.

As you learned from the prior witness panel, it is the Inspector General's Office that has the chief responsibility in the Department of Labor for addressing labor racketeering. The IG is independent of any control of the Department of Labor.

Two other Labor Department agencies are involved in combatting criminal activity that can involve labor unions, union officials, or union employees. The Office of Labor Management Standards and the Pension and Welfare Benefits Administration. With me are two representatives from those agencies who will be giving testimony as well.

OLMS conducts criminal investigations under the Labor-Management Reporting and Disclosure Act. That act sets standards for labor union democracy and financial integrity. PWBA conducts criminal investigations under the Employee Retirement Income Security Act. ERISA governs employee benefit plans, including plans sponsored by labor unions. I will let these gentlemen speak to their roles in more detail.

The main job of the Solicitor's Office is to represent the Labor Department in civil enforcement cases. The Labor Department enforces many different statutes, including those related to these agencies as well as others. I should point out that the Solicitor's Office does not provide legal services to the inspector general. That office has its own staff of attorneys.

The Solicitor's Office has a limited role in criminal cases. The Justice Department handles all criminal prosecutions. As mentioned, OLMS and PWBA conduct criminal investigations. The Solicitor's Office does not control nor direct those investigations nor does it screen the referral of criminal matters to the Justice Department. On criminal matters, the field staff of OLMS and PWBA work with the lawyers who will be prosecuting the case—assistant U.S. attorneys across the country.

The Solicitor's Office does provide legal services to the Office of Labor-Management Standards and to the Pension and Welfare Benefits Administration. We handle civil cases under the statutes, LMRDA and ERISA. The Solicitor's Office often helps bring LMRDA lawsuits to ensure fair union elections.

We are happy to provide answers to any questions that you might have. We are also happy to listen to your questions and to offer our opinions on both the IG's report and the President's Commission Report from 1986.

But I think it best for us to turn now to your questions for me, and since much of the information has been developed in the earlier panel. I thank you again for your invitation.

[The prepared statement of Mr. McAteer follows:]

STATEMENT OF J. DAVITT McATEER
ACTING SOLICITOR OF LABOR
U.S. DEPARTMENT OF LABOR
BEFORE THE
SUBCOMMITTEE ON HUMAN RESOURCES
AND INTERGOVERNMENTAL RELATIONS
OF THE
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT
U.S. HOUSE OF REPRESENTATIVES

July 11, 1996

Mr. Chairman and Members of the Subcommittee:

I am pleased to appear before you today to testify in my capacity as Acting Solicitor of Labor. I have been asked to address the efforts of the Department of Labor (DOL) to detect and investigate labor racketeering and fraud, waste, and abuse in programs and operations within the Department's jurisdiction. I share your interest in eradicating corrupt union activities for such activities erode public confidence in all union activity.

Three agencies within the Department have responsibilities in this general area: the Office of the Inspector General (OIG), the Office of Labor-Management Standards (OLMS), and the Pension and Welfare Benefits Administration (PWBA). Representatives of these agencies will testify today, and will describe their activities in some detail. Each of the three agencies, as appropriate, cooperates with the others. Each agency also works closely with the Department of Justice and the other federal agencies chiefly responsible for the enforcement of federal criminal law.

Within the Labor Department, it is the Office of the Inspector General that has responsibility for combating what is commonly called "labor racketeering." The Division of Labor Racketeering, part of the Inspector General's Office of Investigations, conducts criminal investigations to eliminate the influence of organized crime, labor racketeering, and corruption in employee benefit plans, labor-management relations, and labor unions. I should emphasize that the investigatory responsibilities of the Inspector General are independent of control by the Labor Department, as guaranteed by the Inspector General Act of 1978.

The responsibilities of the Office of Labor-Management Standards and the Pension and Welfare Benefits Administration are less broad than the responsibilities of the Inspector General, but also quite important.

OLMS conducts certain criminal investigations under the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), which establishes standards for labor union democracy and financial integrity. The LMRDA authorizes the Labor Department to investigate possible violations of the statute and to cooperate with other agencies and departments. The work of OLMS is governed by a 1960 memorandum of understanding between the Labor and Justice Departments. The memorandum divides investigative responsibility between the two departments and provides that criminal cases will be prosecuted by the Justice Department. (A copy of the memorandum is provided with my testimony.)

PWBA conducts certain criminal investigations under the Employee Retirement Income Security Act (ERISA), which regulates employee benefit plans--including, but not limited to, plans sponsored by labor unions. ERISA authorizes the Labor Department to investigate possible violations of the statute, as well as violations of general criminal law (Title 18 of the United States Code), and to cooperate with other agencies and departments. PWBA routinely coordinates its criminal investigations with the Justice Department, which prosecutes criminal cases.

Let me speak briefly to the role of my own office, the Office of the Solicitor. Subject in some cases to the statutory authority or oversight of the Justice Department, the Solicitor's Office represents the Labor Department in civil enforcement proceedings under more than 140 laws protecting workers in the United States. The Solicitor's Office, and its attorneys, have very limited involvement in criminal matters that come before the Department of Labor.

Let me explain. As I have suggested, the Solicitor's Office does not prosecute criminal cases. That is the function of the Justice Department. Nor does the Solicitor's Office direct the criminal investigations conducted by the Office of Labor-Management Standards and the Pension and Welfare Benefits Administration, or screen the referral of criminal cases by the two agencies to the Justice Department. Those cases typically are handled by the field offices of OLMS and PWBA, which work directly with United States Attorneys across the country.

The Solicitor's Office does not provide legal services to the Office of the Inspector General, which has its own staff of attorneys. The Solicitor's Office does provide legal services to

OLMS and PWBA in connection with civil cases under the statutes that those agencies administer.

As authorized by the 1960 memorandum of understanding between the two departments, Labor Department attorneys collaborate with Justice Department attorneys in preparing and presenting civil litigation to enforce the Labor-Management Reporting and Disclosure Act. This LMRDA litigation includes cases involving union officer elections, union-imposed trusteeships, and reporting requirements for unions, union officers, and employers. Civil cases investigated by OLMS are referred by the Solicitor's Office to the Justice Department, which will institute an enforcement action on behalf of the Secretary of Labor. Labor Department attorneys then work closely with their Justice Department counterparts to present the civil case.

The Solicitor's Office is also active in the civil enforcement of ERISA, conducting litigation to protect the assets of employee benefit plans and to provide remedies to plan participants. Some of these cases may involve plans sponsored or administered by labor unions. In contrast to the LMRDA, ERISA authorizes Labor Department attorneys to represent the Secretary of Labor in civil actions, "subject to the direction and control of the Attorney General." 29 U.S.C. §1132(j). Typically, the Solicitor's Office conducts ERISA civil litigation without the active participation of Justice Department attorneys.

On occasion, the work of the Solicitor's Office has some indirect bearing on ERISA criminal cases. Parallel civil and criminal proceedings are the first example: Criminal

investigations are often the result of prior civil investigations. This means that civil and criminal ERISA cases may be underway at the same time. In those situations, Labor Department attorneys coordinate closely with Justice Department prosecutors to ensure that the two proceedings do not interfere with each other. Second, when issues involving the interpretation of ERISA arise in criminal cases, Labor Department attorneys often provide technical help to prosecutors. Third, the Solicitor's Office has participated in the training that PWBA provides to its investigators in the conduct of criminal investigations.

Let me address a final topic raised in the Subcommittee's invitation letter: the Labor Department's implementation of the recommendations of the President's Commission on Organized Crime, made in a report entitled "The Edge: Organized Crime, Business, and Labor Unions." The report was formally issued in March 1986, more than ten years ago, during the second term of President Reagan's administration. It made a number of legislative and administrative recommendations. More than two dozen recommendations directly involved the Labor Department and its programs. Several recommendations focused on reports that are submitted to Department agencies in connection with the operation of labor unions and employee benefit plans.

In June 1987, responding to the report of the President's Commission, the Deputy Attorney General approved recommendations made by the Attorney General's Working Group on Labor-Management Racketeering, which included Labor Department representatives. The Working Group addressed the recommendations made by the President's Commission, endorsing

some, rejecting others, and suggesting further study in certain instances. See Attorney General's Working Group on Labor-Management Racketeering, Recommendations to the Attorney General Concerning Proposals Made by the President's Commission with Respect to Labor-Management Racketeering (March 1987). (A copy of this document is provided with my testimony.) One recommendation that was rejected by the Reagan Administration was the consolidation of criminal and civil enforcement responsibilities for oversight of labor organizations and employee benefit plans. See Recommendations to the Attorney General, supra, at p. 5.

In the years after 1987, the Reagan and Bush Administrations apparently continued to examine various recommendations made by the President's Commission. Under the current Administration, the Labor Department has not re-evaluated the President's Commission report or the responses made by previous Administrations. This would be a major undertaking. More than a year was required for the Reagan Administration to develop an initial response to the 1986 report. Naturally, there have been significant changes in the operations of the Solicitor's Office, the Pension and Welfare Benefits Administration, and the Office of Labor-Management Standards since 1987.

Mr. Chairman, this concludes my prepared statement. I hope I have helped to clarify the roles and responsibilities of the Labor Department agencies before you today. I would be pleased to respond to any questions that you or the Members of the Subcommittee may have.

ON SUBCOMMITTEE FILES

U. S. DEPARTMENT OF LABOR
Bureau of Labor-Management Reports
Washington 25, D. C.

(Reproduced from Federal Register dated February 24, 1960)

DEPARTMENT OF LABOR

Office of the Secretary

INVESTIGATION AND PROSECUTION OF CRIMES AND CIVIL ENFORCEMENT ACTIONS

Notice of Memorandum of Understanding Between Departments of Justice and Labor

Section 607 of the Labor-Management Reporting and Disclosure Act of 1959 (Pub. Law 86-257; 73 Stat. 519), effective September 14, 1959, provides, in essence, that in order to avoid unnecessary expense and duplication of functions among Government agencies, the Secretary of Labor may make such arrangements or agreements for cooperation or mutual assistance in the performance of his functions under such Act and the functions of any such agency as he may find to be practicable and consistent with law. Such section further provides for the utilization by the Secretary of facilities or services, among others, of any Department of the United States, including the services of any of its employees, with the lawful consent of such Department. Each such Department is authorized and directed to cooperate with the Secretary and, to the extent permitted by law, to provide such information and facilities as the Secretary may request for his assistance in the performance of his functions under such Act.

In the interest of providing economical and effective discharge of his investigation and enforcement responsibilities under said Act and to avoid unnecessary duplication of functions, the Secretary of Labor has entered into agreement with the Attorney General of the United States under the provisions of the said section 607 of such Act.

Therefore, pursuant to section 3 of the Administrative Procedure Act (5 U.S.C. 1002) notice is hereby given and hereby published of the aforesaid agreement, entered into pursuant to section 607 of the Labor-Management Reporting and Disclosure Act of 1959 (Pub. Law 86-257; 73 Stat. 519), which reads as follows:

MEMORANDUM OF UNDERSTANDING BETWEEN THE DEPARTMENTS OF JUSTICE AND LABOR RELATIVE TO THE INVESTIGATION AND PROSECUTION OF CRIMES AND CIVIL ENFORCEMENT ACTIONS UNDER THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959 (P.L. 86-257)

Whereas, the Labor-Management Reporting and Disclosure Act of 1959 (Public Law 86-257; 73 Stat. 519) imposes certain duties and responsibilities upon the Attorney General and Secretary of Labor with regard to prosecution of crimes arising under the Act and civil enforcement actions under the Act; and

Whereas, that Act, in section 607, imposes upon the Secretary of Labor the responsibility for conducting investigations of persons who have violated, or are about to violate, any provisions of the Act (except Title I, or amendments made by this Act to other statutes); and

Whereas, that Act, in section 607 provides that the Secretary of Labor may make interagency agreements which may help to avoid unnecessary expense and duplication of functions among Government agencies and secure cooperation and mutual assistance in the performance of functions under the Act; and

Whereas, it is desirable and essential that the areas of responsibility and the procedure in connection with the investigations, prosecutions of offenses and civil enforcement actions arising under the Act should be the subject of formal agreement between the Departments;

It is hereby agreed and understood between the Department of Justice and the Department of Labor as follows:

1. *Criminal Prosecutions.* All cases involving violation of the criminal provisions of the Act will be prosecuted by the Department of Justice. These cases investigated by the Department of Labor, hereinafter called, will be referred to the Criminal Division, Department of Justice as provided in section 607.

2. *Investigations of Matters Made Criminal by the Act.* Subject to specific arrangements agreed upon by the Department of Justice and the Department of Labor on a case by case basis, investigations under the Act will be conducted as follows:

(a) The Department of Labor will through its own staff investigate these criminal matters arising under:

1. Title II (Reporting by labor organizations, officers and employees of labor organizations and employers).

2. Title III (Trusteeship).

3. Section 502 (Bonding) of Title V.

4. Section 503(a) (Making of loans by labor organizations to officers and employees of the labor organization) of Title V.

5. That part of section 503(b) of Title V which relates to the payment of a fine of a labor official or employee by a labor union.

(b) The Department of Justice will, under delegation from the Secretary of Labor, investigate these criminal matters arising under:

1. Section 501(c) (Embezzlement of union funds) of Title V.

2. That part of section 503(b) of Title V which relates to a payment of a fine of a labor official or employee by an employer.

3. Section 504 (Prohibition against certain persons from holding office) of Title V.

4. Section 506 (Containing an amendment to section 302, Labor Management Relations Act of 1947, as amended) of Title V.

5. Section 602 (extortionate picketing) of Title VI.

6. Section 610 (deprivation of rights by force and violence) of Title VI.

3. *Notifications.* Whenever either Department learns or is informed of any matter coming within the investigative jurisdiction of the other Department as set forth above, it will notify such other Department in writing and furnish all information in its possession regarding the matter.

4. *Exercise of other functions.* Exercise of delegated investigative authority by the Department of Justice pursuant to this agreement shall not preclude the Department of Labor from making inquiries for the purpose of administrative action related to the crime being investigated. Nothing in this Memorandum of Understanding shall be construed to affect the investigative jurisdiction of the Department of Justice under other statutes.

5. *Prosecutions of Civil Enforcement Actions.* Any violations of the Act which form the basis for civil enforcement actions will be investigated by the Department of Labor. Whenever the Department of Labor considers that a civil enforcement action should be instituted, it will refer the case to the Department of Justice, with the request that suit be instituted on behalf of the Secretary of Labor, and will furnish the Department of Justice with all pertinent information in the possession of the Department of Labor. Upon receipt of such request, the Department of Justice will institute and will conduct the civil enforcement action on behalf of the Secretary of Labor. The Department of Justice will not institute any civil enforcement action under the Act except upon the request of the Department of Labor, nor will the Department of Justice voluntarily dismiss any action so instituted except with the concurrence of the Department of Labor. The Department of Justice will dismiss any action so instituted upon the request of the Department of Labor. Department of Justice attorneys will collaborate with the attorneys of the Office of the Solicitor of the Department of Labor in the preparation and, to the extent feasible, in the presentation of such actions in court.

6. *Parole Board Proceedings.* The investigation and presentation of issues concerning the appropriateness of a grant of a certificate under section 504(a) to an individual by the Board of Parole will be the responsibility of the Department of Labor, including appearances before the Board of Parole.

7. *Instructions.* So that the terms of understanding will be effectively performed both Departments will issue instructions for the guidance of its officers, such instructions to be submitted for comment prior to their issuance to the other Department.

8. Periodic reviews of this agreement will be made to determine any adjustments which seem necessary based on experience under this Act.

JAMES P. MITCHELL,
Secretary of Labor.

Dated: February 16, 1960.

Approved:

WILLIAM P. ROGERS,
Attorney General.

Signed at Washington, D.C., this 19th day of February 1960.

JAMES T. O'CONNELL,
Acting Secretary of Labor.

[F.R. Doc. 60-1767; Filed, Feb. 23, 1960; 8:45 a.m.]

Department of Justice

Recommendations To The Attorney General Concerning Proposals Made By The President's Commission On Organized Crime With Respect To Labor-Management Racketeering

Prepared by the

Attorney General's Working Group
on Labor-Management Racketeering

William F. Weld, Chairman
Assistant Attorney General
Criminal Division

J. Brian Hyland, Member
Inspector General
U.S. Department of Labor

George Salem, Member
Solicitor
U.S. Department of Labor

Floyd I. Clarke, Member
Assistant Director
Federal Bureau of Investigation

March 1987

Part I: Structural Recommendations to Implement A Marketplace Strategy

Proposal I. 1:

The President, acting through the Attorney General, should adopt a national strategy to remove organized crime from the marketplace. Section Eleven, p. 310.

Recommendation:

The federal organized crime enforcement program designates labor-management racketeering as its highest priority and has implemented a national strategy designed to remove organized crime from the marketplace. This long-standing strategy should not be abandoned because of its proven effectiveness. The major targeting technique addresses identified racketeering enterprises, particularly LCN families, and traces all of their illegal activities across industry and jurisdictional lines. A second and complementary technique is directed at particular industry segments (i.e. the industry-specific model proposed by the Commission) when appropriate. Both techniques have been and should continue to be used depending on the circumstances and groups involved. The attached five (5) year statement of accomplishments demonstrates the level of unprecedented success being achieved in the federal organized crime program.

Proposal I. 2.:

Task forces should devise and carry out a planned campaign against organized crime in each industry. Section Eleven, p. 312.

Recommendation:

Once the Attorney General's endorsement of the recommendations contained herein has been conferred, selected programs conducted on the industry - specific model should be executed within existing structures and procedures, specifically the National Organized Crime Planning Council, the Strike Force Executive Committees chaired by the United States Attorneys, and the Memorandum of Understanding between the Labor Department's Office of Inspector General and the FBI.

Proposal I. 3.:

In support of the marketplace strategy, the Department of Justice must take on a new, more significant, and more aggressive role, and it must view organized crime's corruption of businesses as seriously as organized crime's corruption of unions. Section Eleven, p. 313.

Recommendation:

Department of Justice prosecutors and the investigative agencies should continue the aggressive enforcement program already underway that focuses investigative efforts on organized criminal groups which exert their influence in labor-management relations, which compel businesses to deal with mob-run companies and which engage in extortion, fraud, bid-rigging and other anti-competitive practices in particular industries at certain locations. However, the Executive Branch cannot ignore its obligation to enforce statutes passed by Congress which specifically address the fiduciary duties of labor union leaders and the immense concentration of economic power in collectively bargained employee benefit trust funds.

The Department of Justice should continue to aggressively use the RICO statute, including its powerful civil remedies where necessary, to remove racketeers from positions of control in businesses and labor unions and to return these organizations to their legitimate owners and members. Having led the way in the prosecution of Teamsters Local Union 560, the Organized Crime Strike Force program should continue to use court-imposed receivers and other civil enforcement tools in the RICO statute to repair extensive and long-standing damage which has been done by career-criminal groups. This enforcement policy should be undertaken in conjunction with the removal of the members of these groups both from business and labor union affairs and from society at large by criminal prosecution and incarceration.

Proposal I. 4:

The Department of Labor should consolidate criminal and civil enforcement responsibilities for oversight of labor organizations and employee benefit plans. Section Eleven, pp. 314-315.

Recommendation:

Following the Commission's proposal, the Labor Department undertook a study of the existing structure whereby the laws pertaining to the internal affairs of labor unions under the LMRDA and those pertaining to the operation of employee pension and welfare plans under ERISA are administered by separate components of the United States Department of Labor. The Secretary of Labor concluded that the existing arrangement provides each of these laws and their enforcement programs the priority which each requires. The Labor Department also determined that the functions of the Office of Labor Racketeering, within the Labor Department's Office of the Inspector General, which investigates organized criminal activities pertaining to labor organizations and employee benefit plans, should not be combined with the day-to-day operations of the separate components administering general enforcement programs with respect to the LMRDA and ERISA.

Proposal II. 1.A.:

1. Congress should amend the Labor-Management Relations Act [Taft-Hartley, 1947]:

A. To make it an unfair labor practice for a labor organization to be dominated by organized crime. Additionally, it should be an unfair labor practice for any employer to encourage or assist organized crime in the domination of a labor organization. Section Eleven, pp. 318-321.

Recommendation:

The Working Group recommends against implementation of the proposal inasmuch as the anticipated relief can be achieved under existing law. Under current law particular labor organizations can be decertified by the National Labor Relations Board as representatives of employees for purposes of collective bargaining when the criminal activities have corrupted the labor-management relationship.

Where the criminal activities of labor union officials or other persons who exercise control over union affairs affect only the internal operation of labor organizations, union members are better served by removal of the offenders from union office and positions of influence by their conviction and disqualification from these positions under the Labor-Management Reporting and Disclosure Act, as amended in 1984, and/or by criminal forfeiture of office, civil injunction, and court-imposed trusteeship under the federal Racketeer Influenced and Corrupt Organizations (RICO) statute. As a follow-up to pending cases involving court-imposed trusteeship of particular labor organizations, the Department of Justice should consider whether the RICO statute ought to be amended to expressly provide for court-ordered decertification as part of civil enforcement by the Government.

Proposal II. 1.B.:

1. Congress should amend the Labor-Management Relations Act [Taft-Hartley, 1947]:

B. To enact a labor-bribery statute, which will make the purchase of a union or a union office, and selling the right to obtain union work, unlawful. Section Eleven, p. 321.

Recommendation:

The Working Group recommends enactment of legislation similar to the labor bribery statute which was formerly proposed as part of revisions of the federal criminal code. However, jurisdiction should be based on the Labor-Management Reporting and Disclosure Act of 1959 which governs all labor organizations in the private sector whose internal affairs are regulated by federal law. Enactment of the proposal as part of the Taft-Hartley Act would exclude federally regulated unions in the railway and airline industries.

Proposal II. 2.A.:

2. Congress should amend the Labor-Management Reporting and Disclosure Act [LMRDA]:

A. To increase the penalty for a deprivation of rights by violence to a felony offense. Section Eleven, p. 322.

Recommendation:

The Working Group recommends enactment of the proposed legislation with certain changes from the Commission's proposal. In regard to actual and threatened violence directed at labor union members, who are exercising federally protected rights under the LMRDA in relation to internal union affairs, the criminal penalties should fully comport with the penalties imposed with respect to other federally protected activities under 18 U.S.C. 245. Such legislation would not require similar protection for law enforcement officers who afford union members the opportunity to exercise their LMRDA rights because such law enforcement personnel are already protected under existing law.

Proposal II. 2.B.:

2. Congress should amend the Labor-Management Reporting and Disclosure Act [LMRDA]:

B. To give the Secretary of Labor authority to act on behalf of union members when officers breach fiduciary obligations. Section Eleven, page 324.

Recommendation:

The Working Group supports this proposal which would give the United States Department of Labor standing to sue union officials in federal court with respect to the mismanagement of internal labor union affairs.

Proposal II. 2.C.:

2. Congress should amend the Labor-Management Reporting and Disclosure Act [LMRDA].

C. To make delinquent and false reporting of union activities a felony. Section Eleven, p. 325.

Recommendation:

The Working Group supports part of this proposal which applies to reporting and disclosure by labor unions, union officers, employers, labor relations consultants, and surety companies. The imposition of a felony penalty under the LMRDA is appropriate with respect to the willful destruction, concealment or falsification of records required to be kept in violation of 29 U.S.C. 439(c) and the willful failure to file required reports or to maintain supporting records in violation of 29 U.S.C. 439(a).

However, we believe that the knowing falsification of statements or omission of material facts in reports filed with the Department of Labor in violation of 29 U.S.C. 439(b) should remain a misdemeanor in order that prosecutors retain an appropriate plea vehicle in criminal cases. Willfully false entries in union financial records, for example, are frequently reflected as false statements or material omissions in required annual reports, but are less frequently prosecuted because the false reports reflect misstatements and omissions two steps removed from the underlying financial transaction. The same penalty structure should be imposed in regard to similar crimes committed in violation of 29 U.S.C. 461(c) and (d) with respect to labor organizations operating under trusteeship. In egregious cases falsification of reports filed with the Department of Labor can be prosecuted as felonies in violation of 18 U.S.C. 1001. A conviction under Section 1001 in these circumstances would disqualify the convicted person from union office under 29 U.S.C. §504.

Proposal II. 2.D.:

Congress should amend the Labor-Management Reporting and Disclosure Act [LMRDA].

D. To require that any change of information reported in annual reports relative to the name and title of each labor organization's officers be reported within 30 days of that change. Section Eleven, p. 326.

Recommendation:

The Working Group defers to the Department of Labor with respect to this proposal. The Labor Department does not support legislation which would alter existing reporting by labor unions in regard to officer changes. Such changes are now reported annually in reports required to be filed with the Labor Department by approximately 48,000 labor organizations within 90 days after the end of the labor organization's fiscal year. The proposal would generate a large volume of additional paper within the Department of Labor which, based on its experience in conducting hundreds of investigations each year, advises that it has not had difficulty in obtaining the names of current union officers.

Proposal II. 3:

Congress should amend the federal anti-extortion statute (Hobbs Act) to authorize prosecutions for the actual or threatened use of violence, irrespective of whether such conduct is in furtherance of a legitimate labor objective. Section Eleven, p. 326.

Recommendation:

The Working Group supports this proposal which would allow the federal prosecution of significant extortionate violence that is calculated to obtain property in labor-management disputes. This proposal would overturn a 1973 decision of the Supreme Court which establishes a special claim-of-right defense with respect to violations of 18 U.S.C. 1951 for participants in labor-management disputes -- a defense which is not available to any other group in society which engages in extortionate violence. The Department of Justice also favors the inclusion of an exemption for minor violence which is incidental to peaceful picketing by employees and which is not intended to extort property.

Proposal II. 4:

To support the use of antitrust laws against organized crime, Congress should amend Title III of the Omnibus Crime Control and Safe Streets Act of 1968 to include certain antitrust offenses as predicate offenses for electronic surveillance. Section Eleven, p. 329.

Recommendation:

The Working Group defers making any recommendation for further amendment of 18 U.S.C. 2516 pending review of the need for such legislation in future criminal investigations involving anti-competitive commercial practices and organized crime. Other federal crimes proscribing extortion, bribery and fraud are frequently used with or in lieu of criminal antitrust violations and already support the court-ordered electronic surveillance and non-consensual interception of oral conversations, aural communications by wire, and electronic communications.

Proposal II. 5. A. (1):

5. The Department of Labor should make a number of changes to support the marketplace strategy.

   A. Labor organization annual reports should be computerized and be made accessible to field offices [by means of immediately machine-accessible or "on-line" system]. Section Eleven, p. 331.

Recommendation:

The Working Group defers to the Department of Labor's disagreement with the recommendation. Annual financial reports for approximately 48,000 reporting labor organizations are available at the Labor Department in Washington, D.C. and in each of 28 field offices maintained by the Office of Labor-Management Standards, U.S. Department of Labor. The prompt photocopying of these public documents, either as requested or on a recurring basis, for investigative agencies which participate in the marketplace strategy advocated by the Presidential Commission is more cost-effective than making all information instantaneously available to investigators by an "on-line" computer system.

However, the Working Group does urge the Department of Labor to seriously consider adding the names of labor organization officers and employees, which current law requires to be reported on the annual reports, to the existing computerized data base which is available to federal investigators. Such a data base would be compiled on a prospective basis. The Department of Labor supports this expansion of its computerized data base if Congressional funding can be obtained and if a pilot project demonstrates the feasibility of the procedure.

Proposal II. 5. A. (2):

Labor organization annual reports should be ... amended to disclose needed information [by reporting] "[w]hether any officers or employees of a labor organization are employed, hold office, or hold a position of trust with respect to an employee benefit plan or any other labor organization required to file annual reports under the LMRDA; and, if so, the salary received by such person in any and all such offices, employment, or positions of trust." Section Eleven, pp. 331-32.

Recommendation:

The Working Group defers its support for new reporting requirements of this kind. The Department of Labor should continue to utilize existing information collected from labor unions under the Labor-Management Reporting and Disclosure Act and from employee benefit plans under the Employee Retirement Income Security Act.

Proposal II. 5. A. (3):

Labor organization annual reports should be ... amended to disclose needed information [by including] "[a] brief description of functions, duties, or responsibilities of such person employed in a multiple capacity by more than one labor organization or employee benefit plan." Section Eleven, pp. 331-32.

Recommendation:

The Working Group defers to the Department of Labor which advises that an analysis of projected costs and benefits should be undertaken with respect to this proposal. Implementation may require amendment of the Labor-Management Reporting and Disclosure Act to authorize the collection from labor unions of information beyond the name and title of officers, disbursements to officers, disbursements to employees receiving more than $10,000 per year, and information contained in the constitution and bylaws of the reporting organization.

Proposal II. 5. A. (4):

Labor organizational annual reports should be ... amended to disclose needed information [by including] "[t]he numbers of hours of employment devoted to each office, or position of trust, and the percentage of such person's working time devoted to a particular position as a function of such person's total working hours during the fiscal year for which the report is filed." Section Eleven, pp. 331-32.

Recommendation:

The Working Group defers to the Department of Labor which advises that an analysis of projected costs and benefits should be undertaken with respect to this proposal. Implementation may require legislation as part of the Labor-Management Reporting and Disclosure Act to authorize the collection from labor unions of information of this kind.

Proposal II. 5. A. (5):

Labor organization annual reports should be ... amended to disclose needed information [by including] "[t]he date of birth and social security number of each officer listed on the annual financial report...." Section Eleven, pp. 331-32.

Recommendation:

The Working Group defers to the Department of Labor's conclusion that it could not justify the legislation which would be required to collect such data because of Congressional policies expressed in the federal Privacy Act of 1974.

Proposal II. 5. A. (6):

Labor organization annual reports should be ... amended to disclose needed information [by including] "... a declaration of whether any officer listed has ever been convicted of any offense enumerated in Section 504 of the LMRDA, 29 U.S.C. 504." Section Eleven, pp. 331-32.

Recommendation:

The Working Group recommends that the Department of Labor consider adoption of this proposal and support legislation, if necessary, to authorize the disclosure by labor unions of service by disqualified persons. Requiring the disclosure of this information on the union's annual report to the Labor Department will serve to enhance the awareness of union officials that they are prohibited by 29 U.S.C. 504 from permitting certain convicted persons from holding union office. Disclosure of convicted persons who are currently serving in union office will also assist in the detection of prohibited service and enforcement of the statutory prohibition against the disqualified officeholder. The proposal will thereby promote the remedial purposes of section 504 to remove such disqualified persons from positions of trust.

A truthful disclosure of disqualified service is not likely to result in criminal prosecution without further opportunity being afforded to the labor union and disqualified person to vacate the prohibited position. Department of Justice policy requires that where evidence of a willful violation of section 504 is not present, criminal prosecution will not be commenced unless the offending official is notified of the disability and is permitted to vacate the prohibited position without criminal prosecution. An open disclosure of a disqualifying conviction in a report which is public information is just as likely to negate an inference of a willful violation of section 504 as to support it. Therefore in cases of full disclosure, prosecution is not likely to occur until after the disqualified official and the reporting officer have been advised by the Government of the significance of the conviction and these parties refuse to take further steps to forestall criminal prosecution.

Proposal II. 5. A. (7):

Labor organization annual reports should be ... amended to disclose needed information [by including] "[w]hether or not any officer or employee of a labor organization has had any criminal fines or related fees for legal defense of offenses under the LMRDA paid for or advanced by such labor organization." Section Eleven, pp. 331-32.

Recommendation:

The Working Group supports this proposal. The proposal would require the itemization of particular disbursements by labor unions which are already reported on their annual financial reports filed with the Department of Labor. These disbursements are reported in combination with other expenditures on behalf of union officers and on behalf of employees receiving $10,000 or more from the reporting labor organization or an affiliated organization chartered by the same national or international labor organization. Requiring the disclosure of this information on the union's annual report to the Labor Department will serve to enhance the awareness of union officials that they are prohibited by 29 U.S.C. 503 from causing the labor organization to make such payments.

Proposal II. 5. B.:

The Secretary of Labor should develop internal guidelines for Department of Labor auditors to determine what range of administrative expenses, fees, or commissions chargeable to an employee benefit plan are reasonable. Section Eleven, pp. 332-3.

Recommendation:

The Working Group defers to the view of the Department of Labor that the promulgation of guidelines, as recommended, is a desirable goal, but is difficult for two reasons. First, adequate data is not available to be able to make precise determinations and, second, employee benefit plans differ from each other to such a great extent that useful generalizations cannot be made. After more empirical data is obtained, the Pension Welfare and Benefits Administration of the United States Department of Labor will again review this issue to determine whether feasible guidelines may be developed.

Proposal II. 5. C.:

The Department of Labor should conduct more frequent on-site examinations and audits of employee benefit plans. Section Eleven, pp. 333-34.

Recommendation:

The Working Group supports this proposal. The frequency of such examinations is largely a product of the ratio of investigator/auditors to a large number of employee benefit plans subject to regulation.

Proposal II. 5. D.:

The Department of Labor should require all multi-employer benefit funds to audit the data supplied by constituent companies [by requiring the funds] "... to maintain a qualified independent field audit staff, in a proportion to the fund's contribution level and number of contributing employers, to audit contributing employers each year." Section Eleven, pp. 334-35.

Recommendation:

The Working Group defers to the Labor Department's recommendation against requiring a mandatory annual audit of contributing employers. In the opinion of the Department of Labor the failure of employee benefit plan fiduciaries to regularly audit employers which contribute to these plans or to take other reasonable steps as part of their existing duty to preserve and maintain plan assets can be enforced by the Labor Department's remedial action under the Employee Retirement Income Security Act, including the commencement of civil litigation.

Proposal II. 5. E. (1):

The annual report of employee benefit plan, Form 5500, should require information regarding service providers

".... that is not currently required to be included in annual reports:

"names of persons who receive compensation from the plan, through any and all subcontractors who receive compensation from the plan, for services rendered to the plan or its participants;

"the amount of such subcontractor's compensation and the nature of his services to the plan or its participants;

"the relationship of the subcontractor to any contract administrator, service provider, employer, or employee covered by the plan, or the employee organization [whose members are covered by the plan], or any other office, position, or employment the subcontractor holds with any party in interest...."

Section Eleven, pp. 335-36.

Recommendation:

The Working Group defers to the Department of Labor's disagreement with the proposal as written. Requiring an employee benefit plan to identify the subcontractors of persons who provide services under contract with the plan may be feasible with respect to closely held business organizations. However, the administrative and paperwork burden of requiring all plans with more than 100 participants to identify every employee of large corporate service providers who may have contributed some service to the plan would outweigh the benefits obtained by such identification.

Proposal II. 5. E. (2):

The annual report of employee benefit plan, Form 5500, should require information regarding service providers [and other persons, disclosing] ....

"the name, address, date of birth (if an individual), and record of criminal conviction of each fiduciary, contract administrator, and/or service provider company or key employee thereof."

Section Eleven, pp. 335-36.

Recommendation:

The Working Group defers to the Department of Labor which advises that it will study the proposal relating to the reporting of criminal convictions. The Working Group also defers to the Department of Labor's disagreement with the remaining proposals.

Under existing reporting standards, the name and address of the plan administrator must be reported on the Form 5500. Under pending proposals the names and addresses of all plan trustees will be required on a separate schedule to the Form. Because the annual reports are required by statute to be maintained by the Labor Department as public documents, the requirement that the address and date of birth of each key employee of the service provider company be contained in the report raises the same issues concerning rights of personal privacy and paperwork burden that militated against adoption of the proposal with respect to labor organization officials.

Proposal II. 5. E. (3):

The annual report of employee benefit plan, Form 5500, ... should be computerized and made accessible to field offices [by means of an immediately machine-accessible or "on-line" system]. Section Eleven, pp. 335.

Recommendation:

The Working Group defers to the Department of Labor's full agreement with this proposal. The Labor Department is currently engaged in the initial stages of developing an electronic data base from which information contained in the annual financial report filed by employee benefit plans can be made available to field investigators, as recommended by the Commission, and for use in policy formulation, research, and public disclosure.

Proposal II. 5. F.:

Multi-employer benefit funds should engage professional asset managers, independent of the fund, to assist them in fulfilling their fiduciary obligations. [To assist this process, the Department of Labor "should promulgate standards" governing the size of the asset management company hired by the plan.] Section Eleven, pp. 337-38.

Recommendation:

The Working Group defers to the Department of Labor which disagrees with this proposal as written. While independent asset management may be appropriate in certain cases where the size and complexity of particular employee benefit plan operations warrant outside skill and assistance, the use of independent consultants and other devices may be sufficient to ensure that plan assets are managed prudently and solely in the interest of participants as required by the Employee Retirement Income Security Act.

Proposal II. 5. G.:

The Department of Labor should aggressively investigate unlawful payments of attorneys' fees [by labor unions and by employee pension and welfare plans on behalf of their officers and fiduciaries]. Section Eleven, pp. 338-339.

Recommendation:

The Working Group supports efforts by the Department of Labor and other law enforcement agencies to ensure that attorneys' fees paid by a labor union or employee benefit plan are not reimbursed or advanced where it is apparent from the disposition of the court action or review of litigation pending against the officer/fiduciary that the officer/fiduciary's alleged conduct was likely criminal or otherwise detrimental to the organization. Civil enforcement of this proposal would require an amendment of the Labor-Management Reporting and Disclosure Act by giving the Department of Labor standing to sue with respect to breaches of fiduciary duty by officers and key administrative personnel of labor unions which the Department already exercises with respect to employee benefit plans under the Employee Retirement Income Security Act. Moreover, disbursements of union or benefit plan funds for attorneys' fees can be criminally prosecuted as embezzlement or other federal crimes involving larceny and fraud where such disbursements are knowingly and willfully made without proper authorization and/or without a good faith belief that the primary purpose of the expenditure was to further the legitimate interests of the organization as contrasted with the personal interests of the officer/fiduciary.

Proposal II. 5. H.:

The Secretary of Labor should publish the names of service providers who charge excessive administrative fees and should promulgate regulations that declare benefit plan transactions with such providers per se violations of fiduciary trust. Section Eleven, p. 340.

Recommendation:

The Working Group defers to the Department of Labor's disagreement with the proposal. Remedial steps against service providers who charge employee benefit plans at unreasonable rates of compensation are likely to be successful only on the basis of case-by-case adjudication.

Proposal II. 6. A.:

6. The Department of Labor should amend guidelines promulgated pursuant to its Landrum-Griffin Act authority to the extent the guidelines may inhibit membership efforts against organized crime.

A. Secret ballots and voting for union delegates [to union conventions] should be required [by limiting the number of union officials who are granted ex officio status by reason of their simultaneous election as officers and convention delegates in advance of the convention].

Section Eleven, pp. 340-41.

Recommendation:

The Working Group defers to the position of the Department of Labor that the simultaneous election of the same persons as local union officers and delegates to union conventions is in accord with the requirements of the Labor-Management Reporting and Disclosure Act, namely, that convention delegates be elected by secret ballot. Because union members know when they elect local officers that they are also electing convention delegates and because ex officio delegates are held accountable to the rank and file by their need to stand for reelection periodically (at least every three (3) years), the challenged regulation and interpretation of the statute does not produce undemocratic results. Former procedures by which local union executive boards arbitrarily could select particular delegates to attend the convention of the International Brotherhood of Teamsters from the pool of eligible ex officio delegates, and to which the Department of Labor objected, have been changed by the Teamsters Union at its convention in May, 1986.

Proposal II. 6. B. (1):

6. The Department of Labor should amend guidelines promulgated pursuant to its Landrum-Griffin Act authority to the extent the guidelines may inhibit membership efforts against organized crime.

B. Election Abuse Standards.

"... the Secretary of Labor should seek a legislative reversal of the Supreme Court's decision in Hodgson v. Local Union 6799, Steelworkers Union of America, 403 U.S. 333 (1971)."

Section Eleven, pp. 341-42.

Recommendation:

The Working Group defers to the Department of Labor which disagrees with this proposal. The Local 6799 decision holds that the Labor Department's action to challenge a union election cannot include a violation that was known to the union member who initially complained to the Labor Department, but who failed to protest the particular violation to the union as a first step required under the Labor-Management Reporting and Disclosure Act (LMRDA).

The requirement that a union member first attempt to obtain a remedy from the union with respect to the alleged election violation of which he was aware before he can invoke a lawsuit by the Government is consistent with the LMRDA philosophy of minimal interference with internal labor union affairs. Election violations of which the complaining member was not aware by reasonable inquiry and which are detected during the Labor Department's investigation may become the basis of a successful challenge to the protested election.

Proposal II. 6. B. (2):

6. The Department of Labor should amend guidelines promulgated pursuant to its Landrum-Griffin Act authority to the extent the guidelines may inhibit membership efforts against organized crime.

B. Election Abuse Standards.

"... [the Department of Labor] should more liberally construe the 'may have affected' standard [which permits an election of labor union officers to be overturned on the basis of certain violations of the Labor-Management Reporting and Disclosure Act] particularly where [the Department of Labor] knows of an organized crime relationship to a particular local [union]."

Section Eleven, pp. 341-42.

Recommendation:

The Working Group defers to the Department of Labor which disagrees with the proposal because it is based on an erroneous conclusion that a union member who challenges a union election must prove that a violation of the election standards of the Labor-Management Reporting and Disclosure Act affected the outcome of the challenged election. In fact, the member need only allege that a violation of the election standards has occurred. The Department of Labor's investigation must then establish that the alleged violation had a probable effect on the outcome of the election in order to bring suit to overturn the election. The trial court must determine by a preponderance of the evidence that the election irregularity may have affected the outcome of the election in order to require a new election. Further liberalization of this statutory and court-imposed standard would require legislation.

Proposal II. 7. A.:

7. The Internal Revenue Service should tailor its civil and criminal enforcement strategy policies to support the marketplace strategy.

A. Payment of excessive salaries required by collective bargaining should be disallowed [for purposes of civil enforcement of the federal income tax laws and]

"... the Internal Revenue Service should investigate and refer for criminal tax evasion prosecution, the mob's 'earner' companies and predatory employers, and their principals, who use the collective bargaining process and income tax deductions as a means to generate tribute to organized crime."

Section Eleven, pp. 343-44.

Recommendation:

The Working Group supports this proposal and encourages the Internal Revenue Service to disallow business' deduction of bribes, kickbacks, and extortionate payments disguised as wages to the fullest extent permitted by law. Under existing law wage payments for no services or services without reasonably commensurate value as well as payments which subject the payor to a criminal penalty or the loss of license or privilege to engage in a trade or business may not be deducted.

Proposal II. 7. B:

The Internal Revenue Service should make the processing of annual reports of employee benefit plans a higher priority [in order to alleviate the lapse of time between filing of the report with the IRS and its ordinary receipt by the Department of Labor]. Section Eleven, p. 344.

Recommendation:

The Working Group defers to the Department of Labor and the Internal Revenue Service which state that they are working to reduce the time required for the transmission of information from annual reports filed by employee benefit plans to Labor Department investigators by studying the electronic filing of required reports, centralization of processing centers, and other methods.

Proposal II. 8.:

The Securities and Exchange Commission [SEC] should require additional disclosure in filings [with the SEC]

> "... by businesses ... of convictions sustained by key employees, officers, and members of corporate boards of directors .... [D]isclosure of legal proceedings [should] be extended to at least 10 years to provide adequate notice to investors and government agencies as to the background of corporate officials .... The SEC should take the lead in challenging the companies owned or controlled by organized crime to abide by the legal standard of disclosing all material facts that investors should know -- including potential hidden ownerships, interests, and the activities of corporate employees or officers as members of racketeering enterprises."

Section Eleven, pp. 345-46.

Recommendation:

The Working Group supports the SEC's decision to consider an amendment of its regulations governing SEC registrants which make public offerings of securities, list their securities on national exchanges, or trade their securities in the over-the-counter markets. The Commission's proposal would expressly require disclosure of any civil or criminal legal proceeding which occurred within the past ten (10) rather than five (5) years and which was material to an evaluation of the ability or integrity of a corporate director, executive officer, or person nominated to become a director. The SEC does view the current regulation as a general guide to disclosure and has successfully required disclosure of proceedings occurring outside the prior five (5) years under circumstances where the failure to disclose the event was materially misleading to investors.

The disclosure of criminal convictions during the longer period is consistent with other proposals made by the Presidential Commission dealing with the reporting of convicted and disqualified persons in labor unions and employee benefit plans which we recommend should be adopted or studied further. Moreover, a longer period of disclosure may serve to enhance the deterrent effect of the civil enforcement of the Racketeer Influenced and Corrupt Organizations (RICO) statute in those cases where patterns of racketeering activity by corporate officers who conduct their businesses as criminal enterprises are exposed.

Mr. SHAYS. Thank you, Mr. McAteer. Mr. Kotch.

Mr. KOTCH. Mr. Chairman and members of the subcommittee, thank you for inviting me to testify on behalf of the Office of Labor-Management Standards. I would like to submit my written statement for the record and just briefly summarize some key points here today.

The Office of Labor-Management Standards, OLMS, administers provisions of the Labor-Management Reporting and Disclosure Act, which we call the LMRDA. Provisions administered by OLMS provide for union democracy and protect the financial integrity of labor organizations that represent private sector employees. In particular, OLMS conducts criminal and civil investigations, obtains compliance with statutory reporting requirements by labor organizations and others, and provides for public disclosure of those reports.

OLMS also conducts compliance audits of labor organizations to detect criminal and civil violations of the LMRDA and related laws.

Finally, OLMS provides compliance assistance and liaison activities to promote voluntary compliance with the law.

Union officer election cases and union funds embezzlement investigations are OLMS's two most important enforcement activities. Election cases are solely civil and can be initiated on the basis of complaints filed by union members. These investigations must be given priority handling because the LMRDA requires that any legal action to correct election violations be filed within 60 days from the day a member files a complaint with the Department. In a typical year, OLMS investigates approximately 180 election complaints filed by union members.

The other major responsibility under the LMRDA is investigation of embezzlement cases involving union funds. I would like to stress that while OLMS investigations contribute significantly to the enforcement of LMRDA's criminal provisions, these efforts are not expressly directed against organized crime or racketeering, which is handled by the Division of Labor Racketeering in the Department's Office of the Inspector General in conjunction with the Department of Justice.

OLMS dedicates significant resources to criminal investigations, as well as investigations of other criminal violations of the LMRDA, such as improper recordkeeping and reporting. In recent years, OLMS has conducted about 340 embezzlement investigations and generated about 150 criminal indictments annually. From 1985 through 1995, OLMS conducted almost 4,000 criminal investigations which resulted in 1,886 indictments and 1,728 convictions.

Additionally, during this period, OLMS conducted over 9,000 union audits using its streamlined compliance audit program, which resulted in correction of numerous LMRDA violations, such as inadequate bonding and reporting deficiencies.

The criminal indictments and convictions resulted from OLMS investigations of union funds embezzlement by union officers and employees and covered a wide variety of fact situations, involved all sizes of unions, and ranged from relatively small dollar amounts to embezzlements of hundreds of thousands of dollars. Some cases involve an individual employee or an officer working alone to mis-

appropriate union funds, while others involve multiple subjects engaged in elaborate embezzlement schemes.

It is important to note that LMRDA embezzlement convictions frequently result in restitution of funds to the union and are significant in protecting assets for union members. Furthermore, these convictions result in barring the convicted individuals from holding union office and employment for a 13-year period, in accordance with the LMRDA.

I would like to point out that OLMS has consistently stressed the importance of developing and maintaining effective working relationships with U.S. attorneys and other law enforcement agencies, particularly at operational levels, to share information and avoid duplication of effort.

OLMS conducts joint investigations with other Department of Labor agencies and with other Federal agencies, such as the FBI and IRS. Importantly, OLMS has provided information and assistance to the Department of Justice in RICO investigations involving the Teamsters, Hotel and Restaurant Employees, and the Laborers.

In closing, preserving union democracy, assuring the members control their own organizations, and protecting union financial integrity are fundamental objectives of the LMRDA. OLMS is committed to these objectives and vigorously investigates and pursues criminal embezzlement cases involving union funds. Thank you.

[The prepared statement of Mr. Kotch follows:]

STATEMENT OF JOHN KOTCH
DEPUTY ASSISTANT SECRETARY
OFFICE OF LABOR-MANAGEMENT STANDARDS
DEPARTMENT OF LABOR
BEFORE THE SUBCOMMITTEE ON HUMAN RESOURCES
AND INTERGOVERNMENTAL RELATIONS
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT
U.S. HOUSE OF REPRESENTATIVES
JULY 11, 1996

Mr. Chairman and Members of the Subcommittee:

Thank you for inviting me to testify on the Office of Labor-Management Standards' efforts against labor racketeering, in connection with programs and operations within that agency's areas of responsibility.

The Office of Labor-Management Standards (OLMS) administers and enforces the provisions of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA) that are within the jurisdiction of the Department of Labor. These include civil and criminal provisions that provide standards for union democracy, and that protect the financial integrity of labor organizations that represent private sector employees. OLMS also administers and enforces provisions of the Civil Service Reform Act of 1978 and the Foreign Service Act of 1980, which apply similar standards to federal sector unions.

The focus of this hearing is the Labor Department's efforts against labor racketeering. While OLMS investigations contribute significantly to the enforcement of the LMRDA's criminal provisions, these efforts are not expressly directed against organized crime or racketeering. I would like to explain how this came to be. Following enactment of the LMRDA in 1959, an

organized crime program was initiated by the Labor Department's Bureau of Labor-Management Reports, the organization originally created to administer and enforce the LMRDA. This program continued through the mid-1970s, under a successor organization, the Labor-Management Services Administration, as part of a federal strike force program initiated in the late 1960s. In 1978, a new Office of Special Investigations was created by the Secretary of Labor, and was given the responsibility of administering the Department of Labor's participation in the strike force program. Subsequently, the Inspector General Act of 1978, which established the Office of the Inspector General in the Department of Labor, subsequently transferred the Office of Special Investigations intact to the Office of the Inspector General. Thus, today, most criminal enforcement activity relating to organized crime in the context of labor organizations is handled by the Division of Labor Racketeering in the Office of the Inspector General, in conjunction with the Department of Justice. Of course, OLMS cooperates with the Office of the Inspector General and the Department of Justice in particular cases, as appropriate.

Although OLMS's investigations are not directly focused on organized crime, OLMS performs a number of activities enforcing provisions of the LMRDA that protect union democracy and financial integrity. These include conducting criminal and civil investigations, obtaining compliance with statutory reporting requirements by labor organizations and others, and providing for public disclosure of those reports. OLMS also audits labor organizations under the agency's streamlined Compliance Audit Program (CAP) and International Compliance Audit Program (I-CAP) to detect criminal and civil violations of the LMRDA and related laws. Finally,

OLMS provides compliance assistance and liaison activities to promote voluntary compliance with the law.

Responsibility for investigation and prosecution of crimes and civil enforcement actions under the LMRDA is shared by the Department of Justice and the Department of Labor under a 1960 Memorandum of Understanding (MOU) between the two Departments. Under this MOU, OLMS investigates allegations of civil violations of the LMRDA -- such as its union officer election, trusteeship, and reporting cases -- and when the Department of Labor concludes that a violation has occurred, the case is referred to the Department of Justice for litigation. The U.S. Attorneys' Offices and the Regional Offices of the Solicitor of Labor cooperate in the preparation and presentation of LMRDA civil cases in court.

The MOU assigns authority for LMRDA embezzlement investigations to the Department of Justice, subject to mutual agreement between the two Departments for redelegation of investigative authority to OLMS on a case-by-case basis, which routinely occurs. Any evidence of criminal conduct uncovered by OLMS is referred to the Department of Justice for prosecution. In contrast to its role in LMRDA civil cases, the Labor Department Solicitor's Office has no active role in the prosecution of LMRDA criminal cases.

Union officer election cases and union funds embezzlement investigations are OLMS's two most important enforcement activities. LMRDA election investigations are civil, not criminal, matters. Title IV of the statute is the exclusive remedy for union election violations. The Department may

initiate an election case only after receiving a complaint from a union member. These investigations have to be given priority handling because of the very short statutory time limit for filing a civil action to correct violations -- only sixty days from the day a member files a complaint with the Department of Labor. In addition, the LMRDA requires that all of these complaints must be investigated. Moreover, because an LMRDA election case can only be initiated based on a member's complaint, OLMS cannot control the number or the timing of the election complaints that it must investigate. Although the election caseload varies from year to year, in a typical year OLMS investigates approximately 180 election complaints nationwide. Since election cases are a statutory priority, unusually heavy election case workloads can affect the ability of the agency to audit labor organizations and pursue embezzlement investigations.

The other major responsibility of OLMS under the LMRDA is investigation of embezzlement cases involving union funds. OLMS dedicates significant resources to these criminal investigations, as well as investigations of other criminal violations of the LMRDA, such as improper record keeping and reporting.

These investigations are opened based on complaints from members, referrals and requests from U.S. Attorneys and other enforcement agencies, and information developed by OLMS from union financial reports and audit findings. Whenever preliminary findings disclose reasonable grounds to believe that embezzlement of union funds has occurred, OLMS asks the appropriate U.S. Attorney for delegation of authority to investigate. As previously noted, such investigative delegation is routinely granted.

In the early 1980's, OLMS vested agency authority in its field managers to make criminal case referrals directly to their local U.S. Attorneys' Offices, without the involvement of the Department Solicitor's Office. This decentralized approach to criminal case referral has facilitated productive working relationships with the officials responsible for determining final action on the agency's criminal cases, and enhanced the effectiveness of the OLMS criminal enforcement program.

OLMS recognizes that it is important to share information with other enforcement agencies, and equally important not to duplicate other agencies' investigations. Thus, OLMS has consistently stressed the importance of developing and maintaining effective working relationships with other law enforcement agencies, particularly at operational levels. Ongoing liaison, cooperation, and information-sharing within the Department, as well as with other federal, state, and local enforcement agencies, are an integral part of the overall OLMS enforcement program.

For example, OLMS conducts joint investigations with other Department of Labor agencies, including the Pension and Welfare Benefits Administration and the Office of the Inspector General's Division of Labor Racketeering, and with other federal agencies, such as the FBI and the IRS. OLMS field offices keep other agencies apprised of significant investigative findings and make appropriate case and information referrals. Prior to initiating an international union audit under the International Compliance Audit Program (I-CAP), OLMS sends letters to various enforcement agencies within and outside the Department of Labor to seek any relevant information and to ensure that overlapping investigations or audits are not conducted. OLMS

field managers also meet more formally to discuss investigative priorities with their counterparts at Law Enforcement Coordinating Council meetings conducted under the auspices of the U.S. Attorneys' Offices in various judicial districts. Importantly, OLMS has provided information and assistance to the Department of Justice in RICO investigations involving the Teamsters, the Hotel and Restaurant Employees Union, and the Laborers.

In recent years OLMS has conducted about 340 embezzlement investigations and generated about 150 criminal indictments annually. A table detailing OLMS criminal enforcement results for a longer period, 1985 through 1995, is attached to my written testimony. During those ten years, 1,886 indictments and 1,728 convictions were obtained as a result of OLMS criminal investigations. Additionally, during this period OLMS conducted over 9,000 union audits using its Compliance Audit Program (CAP), which resulted in voluntary correction of numerous violations of the LMRDA, such as inadequate bonding and reporting deficiencies. The criminal indictments and convictions resulted from OLMS investigations of union funds embezzlement by union officers and employees, and covered a wide variety of fact situations. Embezzlement is a "crime of opportunity" that may be committed by union employees -- bookkeepers and clerks, for example -- as well as union officers. Cases successfully prosecuted have ranged from relatively small dollar amounts to embezzlements of hundreds of thousands of dollars. Embezzlements have occurred in all sizes of unions. Some cases are simple: an individual employee or officer working alone to misappropriate union funds. Other cases involve multiple subjects engaged in elaborate embezzlement schemes.

LMRDA embezzlement convictions frequently result in restitution of funds to the union and are significant in protecting assets for union members. It is also significant that these convictions result in barring the convicted individuals from holding union office and employment for a 13-year period in accordance with Section 504 of the LMRDA.

In addition to criminal and civil enforcement, OLMS helps prevent violations of the LMRDA from occurring by educating union members and officials and by encouraging unions to comply with the law. Thus, OLMS routinely conducts compliance assistance seminars to brief union officials on requirements of the LMRDA. These seminars sometimes include representatives of various Department of Labor agencies and representatives of other federal agencies, such as the National Labor Relations Board.

OLMS authorized FTE levels have declined over the last ten years, but OLMS has attempted to minimize the effect of this decline on its criminal and civil enforcement program. Most of these staff reductions have been concentrated in the OLMS national office, rather than in its field offices. OLMS consistently attempts to focus resources at the front line, the field investigator level, to preserve the ability of the agency to conduct investigations and perform its mission. In addition, OLMS recently implemented a field and national office restructuring that reduces administrative overhead, eliminates organizational layers, and vests greater responsibility at program operations levels in the field. OLMS is also streamlining its operational procedures and programs through reinvention initiatives to improve efficiency in performing statutory responsibilities at reduced staffing and resource levels.

The Subcommittee also expressed an interest in actions taken by the Department of Labor to implement the 1986 recommendations of the President's Commission on Organized Crime (PCOC). In 1994, the Department of Labor made a change to its labor organization annual financial reports that incorporated the PCOC suggestion that unions should be required to report information concerning whether any of their officers or employees hold office or employment in another union, or in an employee benefit plan. In addition, another recommendation -- that labor organization annual reports should be computerized and made accessible on line to field offices -- is being reexamined at this time. Because of advances in computer technology in the decade since the PCOC report was issued, OLMS is now reviewing the feasibility of allowing electronic filing for those unions which have the capability of doing so, scanning labor organization annual financial reports that are filed with OLMS, and making them available on-line. Hard copies of these reports have always been available, of course, and are frequently provided to other law enforcement agencies, as well as the general public.

If the Subcommittee has a question about any particular PCOC recommendation, I would be pleased to provide a written response supplementing this testimony.

In closing, preserving union democracy, assuring that members control their own organizations, and protecting union financial integrity are fundamental objectives of the LMRDA. OLMS is committed to these objectives, and vigorously investigates and pursues criminal embezzlement cases involving union funds.

At this time I will end my formal testimony, and respond to any questions that the Subcommittee may have.

OFFICE OF LABOR-MANAGEMENT STANDARDS

CRIMINAL ENFORCEMENT RESULTS

FY 1985 - 95

FISCAL YEAR	CRIMINAL CASES	INDICTMENTS	CONVICTIONS	FTE
1985	339	152	132	425
1986	382	157	151	424
1987	415	188	147	420
1988	414	169	181	423
1989	363	168	149	419
1990	353	205	153	411
1991	386	208	195	392
1992	343	182	177	369
1993	368	154	164	337
1994	334	150	131	332
1995	275	153	148	299
TOTAL	3,972	1,886	1,728	

Mr. SHAYS. Thank you. Mr. Lebowitz.

Mr. LEBOWITZ. Thank you, Mr. Chairman. Thank you for inviting me today to testify about the Pension and Welfare Benefits Administration's enforcement efforts regarding organized crime and labor racketeering in employee benefit plans subject to the Employee Retirement Income Security Act.

Eradicating organized crime—in fact, eradicating all crime—from employee benefit plans is a very important part of our mission. I would like to share with you today some of the steps we have taken to improve our enforcement programs in general and our criminal enforcement program in particular.

PWBA is the agency within the Department which has responsibility for the administration and enforcement of title I of ERISA. Our universe consists of approximately 750,000 private sector pension plans, which together cover approximately 50 million individuals and their families and contain more than $3 trillion in assets.

The primary focus of title I of ERISA is not on labor racketeering or on labor unions; it is on employee benefit plans. The mission of PWBA is to protect the assets of those plans and to assure that the plans' participants and beneficiaries get the benefits that they have been promised.

In the enforcement area, this mission is accomplished by civil investigations leading, when violations are found, to voluntary compliance or Federal district court litigation. Criminal investigations are also an important part of our mission. In fiscal year 1995, for example, we closed more than 3,800 investigations and recovered or restored more than $340 million. Also, 102 criminal cases were completed during that fiscal year, resulting in 101 indictments and 32 convictions or guilty pleas.

PWBA handles civil and criminal cases differently. Most civil cases are opened based on computer generated targeting runs from the annual report, the form 5500, or as a result of either national or field office enforcement projects. Current national office enforcement projects include a 401(k) enforcement project; an administrative services health care project; a multiple employee welfare arrangement, MEWA project; real estate valuation cases; and investigations involving plan investments in derivatives.

When civil lawsuits are filed, they are handled by the Office of the Solicitor. Criminal cases are coordinated by the Department of Justice through the various U.S. attorneys' offices. If a PWBA investigator or office uncovers potential criminal conduct, the matter is immediately brought to a local assistant U.S. attorney.

It is my understanding that other Federal law enforcement agencies with criminal investigative responsibilities do the same. Cases with prosecutive merit are then assigned by the AUSA to either one agency for investigation or to an investigative team composed of investigators from two or more agencies.

The prosecutor supervises the investigation, obtains any necessary grand jury subpoenas, search warrants, or electronic surveillance orders, and if an indictment is obtained, handles the prosecution.

The number of different criminal investigative agencies, both within and outside the Department of Labor, reflects the different perspectives each agency can bring to bear on the problems im-

posed by criminal activity. The Office of the Inspector General, Division of Labor Racketeering, focuses directly on organized crime and labor racketeering, the IRS focuses on nonpayment of taxes, the Postal Inspection Service focuses on the use of mails to defraud, OLMS focuses on labor unions, the FBI focuses on the entire gamut of Federal crimes; and PWBA, of course, focuses on employee benefit plans.

All of this criminal investigative activity is coordinated and supervised by the one agency with overall responsibilities for every criminal prosecution brought on behalf of the Federal Government, the U.S. Department of Justice.

The 10 years which have passed since the report of the President's Commission on Organized Crime have seen a dramatic increase in the tools available to our investigative staff. They now have more and better information, training, and assistance in case targeting. Some of these improvements are automation of the retrieval of data from the annual report and provision of that data, much of it online, to our own investigators, as well as to investigators from other criminal investigative agencies.

Sophisticated targeting runs based on this data are done by our national and field offices to assist in case selection. The allocation of investigative time spent on criminal cases has increased from 5 percent to a minimum of 15 percent.

The creation of a full-time senior staff position of criminal case coordinator, whose duties include the supervision of criminal training activities within the agency, the dissemination of criminal investigative material in liaison with other agencies, both State and Federal, engaged in criminal law enforcement activities; the creation and implementation of a formal enforcement strategy implementation plan with considerable input from PWBA's front-line personnel, which provides the agency its framework for conducting its enforcement program; the development of an 8-day, in-house, criminal investigative training program for our investigators, whose faculty includes representatives from the Department of Justice, the U.S. Attorney's Office, the Office of the Inspector General, the Solicitor's Office, Postal Inspection Service, the Criminal Defense Bar, as well as, of course, PWBA personnel.

Students of this course have included investigators from other agencies, including the OIG, the IRS Criminal Investigation Division, and the Department of Justice. In addition, PWBA investigators have received criminal training outside the agency, such as at the Federal Law Enforcement Training Center at Glynco, GA.

The elimination of unnecessary reporting and supervisory levels so that most enforcement matters can be handled exclusively at the field level. Preparation and distribution of a prosecutors guide designed to facilitate the prosecution of criminal cases involving employee benefit plans. The development of a program for referral of cases which may not be attractive for Federal prosecution to State or local authorities for prosecution.

And, finally, and importantly, as mentioned in the Deputy Secretary's July 3 letter to the subcommittee, the Department has endorsed legislation designed to further protect employee benefit plans by eliminating the limited scope audit exception in the stat-

ute and requiring the immediate reporting to the Department of certain serious abusive situations.

As a result of these and other initiatives, we now have a stronger criminal enforcement program than we had in 1986, and in the future we hope to make it even stronger. I look forward to working with this subcommittee in achieving that goal. This concludes my remarks, and I would be happy to answer any questions that you or the subcommittee may have.

[The prepared statement of Mr. Lebowitz follows:]

STATEMENT OF ALAN D. LEBOWITZ
DEPUTY ASSISTANT SECRETARY
PENSION AND WELFARE BENEFITS ADMINISTRATION
DEPARTMENT OF LABOR
BEFORE THE SUBCOMMITTEE ON HUMAN RESOURCES
AND INTERGOVERNMENTAL RELATIONS
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT
UNITED STATES HOUSE OF REPRESENTATIVES
JULY 11, 1996

Mr. Chairman and Members of the Subcommittee:

Thank you for inviting me to testify today about the Pension and Welfare Benefits Administration's (PWBA) enforcement efforts regarding organized crime and labor racketeering in employee benefit plans subject to the Employee Retirement Income Security Act (ERISA). Eradicating organized crime--in fact, eradicating all crime--from employee benefit plans is a very important part of our mission. I would like to share with you today some of the steps we have taken to strengthen our enforcement programs in general and our criminal enforcement program in particular. While we have made considerable progress in this area, we recognize there is much more to be done. We welcome any suggestions this subcommittee may offer to assist us in achieving our common goal of safeguarding the hard-earned pension and other employee benefits of American workers.

As you know, the primary responsibility of PWBA is to administer and enforce ERISA. We do not directly police or regulate organized crime, labor racketeering or, indeed, labor unions in general. Our mission is to protect the interests of participants in employee benefit plans and, in particular, to assure that the

pension, health and other benefits they have been promised are there when they or their beneficiaries need them.

At the outset, I think it would be helpful to this subcommittee for me to briefly describe for you the employee benefit universe we regulate, and the functions PWBA performs in connection with that universe, so that our criminal enforcement program can be viewed in its proper context.

PWBA is the agency within the Department of Labor (DOL) which has responsibility for the administration and enforcement of title I of ERISA. The Internal Revenue Service is primarily responsible for title II of ERISA, and the Pension Benefit Guaranty Corporation is responsible for title IV. Title III provides a framework for the three agencies to coordinate their activities.

Title I of ERISA gives the Secretary of Labor responsibility for protecting the rights and financial security of more than 200 million employee benefit plan participants and beneficiaries and for assuring the integrity and effective management of the private pension and welfare benefit plan system. There are nearly seven million pension and welfare benefit plans, which contain about $3 trillion in plan assets. Collectively, these plans are the largest investor in the U. S. economy. In addition, approximately $950 billion is spent on health care each year; about half of this is spent for services received by

participants and beneficiaries of ERISA covered welfare plans. Some of these pension and welfare plans are sponsored by labor unions, and individuals connected to those plans are subject to both §302 of the Taft-Hartley Act and to the fiduciary provisions of ERISA.

In carrying out its responsibilities under title I of ERISA, PWBA conducts a wide range of activities which include:

- Criminal and civil investigations to determine if the provisions of title 1 of ERISA and/or Title 18 (the federal criminal code) as they relate to employee benefit plans have been violated and, if so, to take proper corrective action.

- Receipt and public disclosure of ERISA required annual financial reports, summary plan descriptions and other documents filed by certain employee benefit plans;

- Assistance to participants and their beneficiaries regarding their benefits as well as their rights and obligations under ERISA;

- Education, technical and compliance assistance and guidance for plan sponsors, fiduciaries, service providers, and others;

- Issuing regulations and interpretations under title I of ERISA;

- Granting class or individual exemptions regarding transactions prohibited by ERISA; and

- Working with other federal agencies as well as with the states and local authorities to avoid duplication of effort and assure maximum protection to plan participants.

We consider all of these functions important and vital to the interests of the American worker and none more so than our responsibility to investigate and correct violations of ERISA. In fact, the percentage of PWBA's resources devoted to enforcement activities has increased dramatically since the issuance of the Report of the President's Commission on Organized Crime in 1986. Virtually all of PWBA's investigations are done by our 397 Field staff, located in ten Regional and five District offices around the country. Our Field enforcement staff currently accounts for 65% of PWBA's total FTE. In 1985, the percentage was only 54%. Almost all additional resources received by PWBA, and its predecessor, since 1985 have been dedicated to our enforcement programs--including Field investigations and the reporting compliance program in the National Office.

The majority of cases investigated by PWBA involve potential breaches of the fiduciary provisions of title I of ERISA. Among the remedies available if such breaches are proven are restitution to the plan of all amounts lost as a result of the breaches (including interest or lost opportunity costs), disgorgement of any unjust enrichment and prospective injunctive relief to prevent reoccurrences of the violation. In addition, title I of ERISA imposes a civil penalty on the person involved of 20% of the amount recovered.

The last eleven years have seen a dramatic increase in the tools provided to our investigative staff so that they now have more and better information, training, and assistance in case targeting. Some of these improvements are:

- Data submitted by employee benefit plans on Forms 5500 is computerized and available on-line in all of our field offices;

- Sophisticated targeting runs, based on this data, are done by our National and Field Office to assist in case selection;

- Formal, structured training programs have been created

in-house to train our investigators in areas such as financial institutions, accounting for non-accountants, and conducting criminal investigations;

- The creation and implementation of a formal Enforcement Strategy Implementation Plan (with considerable input from PWBA's front-line personnel) which provides the agency its framework for conducting its enforcement program; and

- The elimination of unnecessary reporting and supervisory levels so that most enforcement matters can be handled entirely at the field level, with sufficient National Office involvement to assure appropriate policy direction and uniform enforcement practices.

I would like now to turn briefly to how our enforcement program is currently structured, since there have been many significant changes in the last three years. What we have tried to do--and I think we have succeeded--is give our field managers more autonomy and authority in setting their priorities, conducting their investigations, and obtaining corrective action when violations are found, while, at the same time, establishing and implementing certain National Office priorities and initiatives. The details of this approach are contained in the Enforcement Strategy Implementation Plan, which was completely revised in 1994.

Copies of the revised Plan, I believe, have already been provided to this subcommittee.

As you will see when reviewing the Plan, the PWBA National Office establishes certain nation-wide enforcement projects. Investigations relating to these projects are undertaken by all field offices with PWBA's National Office of Enforcement providing a vital informational and coordinating role. The National Enforcement Projects currently underway include:

MULTIPLE EMPLOYER WELFARE ARRANGEMENTS (MEWAs)

Multiple Employer Welfare Arrangements (MEWAs) are mechanisms by which an entrepreneur pulls together groups of small employers or individuals to create a larger entity with stronger negotiating and purchasing power and the ability to pool its risk of adverse claims experience. Sometimes, unfortunately, these entities do not fulfill the promises made by their promoters to pay participants' health claims because sometimes they are little more than Ponzi schemes. PWBA has put particular emphasis on identifying ongoing abusive and fraudulent MEWAs which has resulted in a number of civil and criminal actions. Among other things, we have been successful in putting MEWAs into receivership, marshalling their assets to pay participant claims and arranging for their orderly liquidation, and in convicting the guilty promoters. Many of these arrangements attempt to

evade state regulation by posing as legitimate labor unions even though they engage in no representational activities.

EMPLOYEE CONTRIBUTION PROJECT (ECP)

The Employee Contributions Project targets employers who divert or delay employee contributions to employee benefit plans. To date, PWBA has opened 1,157 investigations on this abusive practice involving both §401(k) (978 cases) and health care plans (179 cases). Over $10 million has been recovered on behalf of plan participants as a result of this project. In addition, twenty-one individuals or companies have been subject to criminal prosecution.

ADMINISTRATIVE SERVICES ONLY (ASO) HEALTH CARE PROJECT

This initiative has focused on certain insurance companies that provide administrative services to self-funded employee health benefit plans. We have found numerous examples of insurance companies using their economic leverage to negotiate discounts with hospitals, which they then fail to pass on (in situations where they are contractually obligated to do so) to their ASO clients. So far, two lawsuits have been filed, both of them against Blue Cross/Blue Shield organizations, and numerous voluntary compliance settlements have been obtained totalling approximately $19 million and affecting at least 200,000 individuals. Over 900 ERISA plans were impacted.

REAL ESTATE VALUATION CASES

Based on published reports of overvaluation of real estate and our experience in several investigations, a project was commenced to investigate the alleged overvaluation of real estate held by certain commingled real estate funds in which pension plans had invested. Currently, PWBA has several active cases involving commingled funds managing assets ranging in value from approximately one-quarter billion dollars to more than three billion dollars. We expect that either civil litigation or voluntary compliance efforts will be initiated to recover any losses incurred by ERISA plans as a result of any proven overvaluation.

PROXY PROJECT

On July 29, 1994, the Department issued an interpretative bulletin (Interpretative Bulletin 94-2) to clarify pension plan managers' responsibilities for voting proxies and to give guidance on corporate governance issues. In conjunction with the issuance of I.B. 94-2, PWBA initiated Proxy Project III to examine pension plans and their investment managers' proxy voting practices. A total of 56 investigations were opened by regional offices in New York, Los Angeles, Chicago, and Boston. The final report was released on February 23, 1996, at the Institutional Shareholder Services Conference in Washington, D.C. As shown by past experience, PWBA's investigative presence in

the Proxy voting universe will promote compliance with the Interpretive Bulletin.

DERIVATIVES

In response to concern over potential problems with plan use of derivative instruments, PWBA developed the Derivatives Project in order to identify ERISA plans which are involved in speculative or risky derivative investment practices. The focus of the project is to identify and target plans investing in certain high-risk derivative instruments to determine whether those plans have suffered losses or are at excessive risk of such losses, and whether there have been any fiduciary breaches with respect to making and monitoring the investments. In addition, as part of our efforts in working with other agencies, PWBA's position with respect to certain derivative investments by pension plans has recently been widely publicized in a letter to the Comptroller of the Currency, Eugene A. Ludwig.

Although these National Office projects have resulted in many criminal cases, you will notice that none of these projects are pursued expressly for the purpose of criminal law enforcement. There is a specific reason for this. PWBA directs and coordinates the Federal Government's civil ERISA enforcement program; it is the Department of Justice which directs and coordinates criminal law enforcement. Since PWBA is the only

agency investigating civil violations of title I of ERISA, it is in a position to coordinate and centrally-direct enforcement initiatives and projects, such as those described above.

Moreover, PWBA is not the only agency conducting criminal investigations relating to employee benefit plans. In addition to our efforts, the Department of Labor's Office of Inspector General/Division of Labor Racketeering (OIG/DLR), the Federal Bureau of Investigation, the Internal Revenue Service, and investigators from the U.S. Postal Service regularly conduct such investigations on a nation-wide basis. In addition, local agencies, such as the Waterfront Commission of New York and New Jersey with whom PWBA conducted a major investigation of employee benefit plans sponsored by the International Longshoreman's Association, are often involved. Finally, when PWBA is conducting a criminal investigation of an employee benefit plan affiliated with a labor union, the Department of Labor's Office of Labor-Management Services may be involved.

The number of different agencies involved in criminal investigations, both within and outside the Department of Labor, reflects the different perspectives each agency can bring to bear on the problem posed by criminal activity. OIG/DLR focuses directly on organized crime and labor racketeering, the IRS focuses on non-payment of taxes, OLMS focuses on labor unions, and PWBA, of course, focuses on employee benefit plans. All of

this criminal investigative activity is coordinated and supervised by the one agency with overall responsibility for every criminal prosecution brought on behalf of the federal government: the United States Department of Justice. As a result, PWBA has found it most effective to decentralize its criminal law enforcement program through its ten Regional and five District Offices under the direction of the appropriate Assistant United States Attorney (AUSA), with PWBA National Office liaison provided by a full-time criminal case coordinator.

PWBA gets involved in criminal investigations in one of two ways. First, a complaint, civil ERISA investigation or other source, may cause a PWBA field office to believe that criminal activity involving employee benefit plans may have occurred. Although PWBA has statutory authority to directly investigate the alleged criminal activity, PWBA policy is for the local office to take the matter to the appropriate AUSA at the earliest possible time. If it is a relatively straightforward matter that only involves an employee benefit plan, the AUSA will usually request PWBA to undertake and complete the investigation under the supervision of the U.S. Attorney's office. In a more complicated case--and virtually all organized crime and labor racketeering cases are complicated--the AUSA will put together a team composed of investigators from various agencies. Sometimes, the AUSA will conclude that the matter has no prosecutive appeal, in which case it will either be referred to a state or local authority or

closed entirely with no further expenditure of investigative effort.

The second method by which PWBA gets involved in a criminal case is through a request for PWBA participation from a local AUSA, usually as part of an investigative team. Virtually all of PWBA's involvement in investigations relating to organized crime and labor racketeering occur in this manner. I am aware of no situation during my entire tenure in the Department of Labor as Deputy Assistant Secretary in charge of Program Operations--and that goes back to 1984--when PWBA has refused a request by an AUSA to participate or lend its expertise to an investigation involving organized crime or labor racketeering.

PWBA has two areas of expertise which it can bring to bear in any criminal investigation. The first is its knowledge of employee benefit plans and their administration. The second is its experience with the complicated provisions of title 1 of ERISA and their relationship to the complex, rapidly changing financial markets and investment strategies of the current business environment. This knowledge is maintained and fostered by PWBA's policy of not assigning any investigator to an exclusively civil or criminal track. This expertise is not only used in the investigation of criminal matters assigned exclusively to PWBA, but also made available to all components of the investigative

teams put together under the direction of the U.S. Attorney's Offices in major criminal investigations.

On occasion, PWBA may provide its expertise in the form of expert or technical testimony on ERISA or employee benefit plans during the trial itself or in providing guidance to the AUSA in a highly technical area with which he or she may not be all that experienced.

The ultimate questions to be asked are how well this approach to criminal enforcement is working and whether it can be made better. The answer to the first question is that I think it is working very well. The answer to the second question is that of course it can be made better. As a result of these steps, we believe it is now a stronger program than it was in 1985 and, in the future, we hope to make it even stronger.

Let me conclude by citing some of the improvements in PWBA's criminal enforcement program since publication of the Report of the President's Commission on Organized Crime in 1986.

- We have increased the allocation of investigator time spent on criminal cases from 5% to a minimum of 15%.

- We have established a full-time position of criminal coordinator in the National Office. The duties of this

position include the dissemination of information to and among the ten Regional Offices and liaison activities with other criminal investigative agencies.

- We have developed an eight day in-house criminal investigations training program for our investigators whose faculty includes representatives from the Department of Justice, U.S. Attorney's Office, OIG/DLR, SOL/PBSD, the Postal Inspector's Office, and the criminal defense bar, as well as, of course, PWBA personnel. Students at this course have included investigators from other agencies. In addition, PWBA investigators have received criminal training outside the agency, such as at the Federal Law Enforcement Training Center at Glynco, Georgia.

- We have automated the retrieval of data from Forms 5500 and made the data readily available not only to our own investigators, but to those from other criminal investigative agencies.

- To facilitate the prosecution of criminal cases involving employee benefit plans, we have prepared and distributed a "Prosecutor's Guide" to United States Attorney's offices throughout the country.

- For those cases which may not be attractive for Federal Prosecutors, we have developed a program of referral to state or local authorities for prosecution. This process is especially important in our current program to protect employee contributions to §401(k) plans.

- As mentioned in the Deputy Secretary's July 3 letter, we have endorsed legislation designed to further protect employee benefit plans by eliminating the limited scope audit and requiring the immediate reporting to the Department of certain "irregularities".

This concludes my prepared remarks. I would be happy to answer any questions the subcommittee may have.

Mr. SHAYS. I thank you. And all three of your full statements will be in the record. We will start with Mr. Souder.

Mr. SOUDER. One kind of question I have—and I do not want it to be misinterpreted because I feel that in some of the business-related Departments, whether it be Treasury or Commerce or even EPA, one of the problems we have are people from the industry going into the Department and back out. But do you, in any of these oversight agencies, do you see people who have managed union pension plans then coming into the Government? I mean, is there a revolving door like there are in some other agencies?

In other words, are employees who are working with you, have they been affiliated with certain unions in the past? Are any of the pension funds that you have looked for that kind of experience? Do you have a mix? Mr. Kotch first.

Mr. KOTCH. Are you talking at the leadership level or just generally?

Mr. SOUDER. What I am trying to get at is, is there at a staff level of people who investigate cases, people who work for the Government then go to the pension funds and back and forth like we see in EPA and some of the other regulatory agencies? I assume that is to some degree true, and I wanted to check my assumption.

Mr. KOTCH. I would think that very few of OLMS's employees have worked for unions. I think a few of our investigators may have at an earlier time, but very few people.

Mr. SOUDER. One of the questions I have, in your testimony when you were talking about how you decide whether or not—you say you investigate approximately 180 election complaints, and then, because of your case load, you cannot necessarily pursue everything. Can you give me some idea of the criteria? Is it the number of complaints, the size of the union, kind of the scale of the complaints? What are some of the criteria you make before you go ahead on one of your investigations?

Mr. KOTCH. In the election area, the LMRDA provides that we have to investigate member complaints if they meet certain timeframes. So, in any given year, we can have few or more cases; but we have to investigate those particular cases regardless of resource levels. Now, in the criminal area, for instance, we basically pursue——

Mr. SOUDER. I misread your statement. You are saying that because you have to pursue those, they——

Mr. KOTCH. They have to be our No. 1 priority in any given year.

Mr. SOUDER. The embezzlement case load, then, can get backed up because you are having to pursue the——

Mr. KOTCH. Exactly right.

Mr. SOUDER. And how do you decide, then, on an embezzlement case. Are they similar? The size of the union?

Mr. KOTCH. We try to basically investigate all criminal leads. We do not stockpile them; we investigate virtually all of them.

Mr. SOUDER. OK. This is another kind of generic question. When you said you are protecting standards for the union democracy and financial integrity, do you view your clients as union members predominantly or the unions themselves?

Mr. KOTCH. I would view both of them as customers or clients. The LMRDA is obviously designed to protect union funds, union

members' rights. We often deal with, of course, the officials of the unions to accomplish that.

Mr. SOUDER. There is a lot of concern on our side of the aisle about the repeal of the Executive order that required Government contractors to give notice of their right not to collect dues, which would be a protection of an individual member.

I know that part of the objection to that was that it seemed to be isolated, and that is why in legislation or, for that matter, an Executive order could have said that you post all union members' rights; the President would not have had to repeal the full Executive order. How do you feel about that, and why would that have been rescinded, when that is protecting an individual union member's rights?

Mr. KOTCH. That is primarily an NLRB matter. The LMRDA would not necessarily deal with that particular issue, so I do not think I should comment on that.

Mr. SOUDER. So you do not view yourself as necessarily because you are dealing solely with the financial trust and election process, you do not deal with——

Mr. KOTCH. We are internal union. Right.

Mr. SOUDER [continuing]. You do not deal with other rights as far as——

Mr. KOTCH. We generally do not deal between the relationship a member has with the employer; we are strictly internal union.

Mr. SOUDER. That is an internal union question.

Mr. KOTCH. Right. That particular example is. Right. But that would be an NLRB matter.

Mr. SOUDER. Why wouldn't that be an internal union matter?

Mr. KOTCH. It is an internal union matter.

Mr. SOUDER. But it is an internal union matter that is not under your jurisdiction.

Mr. KOTCH. Right. Exactly right.

Mr. SOUDER. So you would not have the ability to deal with it, or you just choose not to?

Mr. KOTCH. We do not have the statutory ability to deal with it.

Mr. SOUDER. Can I ask you—and this would go to all three of you. The general tone of much of what we are hearing today seems to be, Oh, we are trying to work together; we are trying to explain to you all what we all do. What is your reaction to the inspector general's report and others that suggest that if there were better coordination, you would better be able to pursue and prioritize the cases. And maybe each one of you could comment briefly on that. I am sure that will set up future questions.

Why don't we go in the order you testified? Mr. McAteer.

Mr. MCATEER. OK. That is fine. The inspector general's report that has been much discussed here is taken very seriously by the Department of Labor because the inspector general, one of his roles is to look over what we do and to see how well we do it. And I think it raises a quite interesting question, from my 4½ months in this particular job, but it also raises a question because of sort of the history of this. It is not a new problem; it is a lengthy problem. How did we get here? and that kind of question, because it goes back to the President's commission in 1986.

And so we have had prior administrations, in effect, who have had this question on their plate, and interestingly you have, they have come to somewhat the same conclusion, which is not the conclusion that the inspector general comes to, or at least not exactly the way the inspector general comes to it.

I think, first, it is important—and my colleagues will testify, I think—that there is coordination at the field level, quite a bit of coordination; and I think that Mr. Masten and Mr. Keeney have testified to that effect earlier. And I wonder why that happens. I mean, why don't you have this coordination then on a national level?

Well, I think if you look at the very specifics of the 12 recommendations, that these 12 recommendations explain why you do not have as much coordination or what the limits of the coordination are. For example, Chairman Shays raised a question about coordinated strategies for press releases. Well, I can speak to this both from the acting solicitor's office and from my other position as Assistant Secretary of Labor for Mine Safety.

I am not sure what purpose would be served when we have a prosecutorial step that we take. Usually it is involving—I am speaking now in the mining area—usually it is involving some mine problem, some prosecution under the Mine Act, be it civil or criminal. That is generally done in the field. It is done near the mine site. It is done with the U.S. attorney. I am not sure what purpose it would serve to have this coordinated strategy with regard to press releases in that particular area.

Interestingly enough, several administrations have looked at this, again, this same general question and sort of come to the same conclusion: that is, that you are spending more time trying to coordinate than you are spending the time where you want to be, which is dealing with criminal or civil matters involved with unions, or involved with pensions or involved with mine safety, or any of the other enforcement agencies.

So if we can honestly address these questions, and I take the chairman and you at your word when you said this is a government reform committee, we ought to ask Does this make good sense. Because, on the face of it, it sounds very enticing. Coordinated strategy. All of us say, Well, that is a good idea.

And, indeed, when we came in as an administration, when I came in, the question was, Why don't we have a coordinated strategy? Well, some part of it is. What does it achieve? Is it achieving cleaner unions? Is it achieving safer pensions? Is it achieving safer mines, for that matter? And if it does not achieve those purposes, then I think that is why you have to grapple with the question.

I think it is a very legitimate question, and I think that honest people can differ on the conclusion, and I think that is what Tom Glynn's letter back to Mr. Masten, the IG, says, basically, in some cases it makes sense to do it; and in some cases it makes sense to do part of it; and in some cases it does not make sense after all.

Mr. SOUDER. That was a very interesting, by the way, exposition of the tradeoffs between laissez-faire lack of committee meetings and go out and charge versus the need to have kind of coordinated planning, and we struggle with that all the time in here. We kind of go back and forth——

Mr. SHAYS. I wonder if the gentleman would yield a second.

Mr. SOUDER. Sure.

Mr. SHAYS. I was taken aback by the inspector general really not being extraordinarily familiar with the February 14 response. Are there two people from the Inspector General's Office here? Would you raise your hands if you are still here? You are not witnesses, but if you would convey the information that—what we are going to do is the committee is going to sit down with the inspector general and with someone from the Department of Labor.

We are going to categorize what is important because what is clear repeatedly through this response to the Department is that there is a kind of tribal warfare between the different agencies. And I want to know how much of that is the problem.

And some of the things that our hearing has not achieved, which I had hoped it would, would be a real delineation of what truly is the highest priority, what is not, what the Department thinks, where there is common ground and where there is not.

We are talking about five different units within the Department of Labor, but maybe it is just two that we are really talking about, and we want to see better coordination. We are just starting to focus on this, but your point is well taken, that to the extent that there are some recommendations that they have not been implemented and there must be a reason.

I would be happy to let you respond, and then I would yield back.

Mr. MCATEER. At the risk of waxing philosophical, the question you ask is a very legitimate question. I mean, how did we get here? So you look back at the statutes. What is the purpose of the pension statute? Well, it is to protect pensions, and this is to keep clean unions. The statutes were passed at different times—1959 and 1974. And the Congress says, Go do what is right, and gives you the power to do civil, criminal, as well as, for example, in the OLMS to teach people how to do it right so that the agency then has all of these powers within its grasp to try to achieve clean unions. Not just try to be in criminal enforcement, but the purpose of the statute is to try to achieve clean unions, and the aim is to protect pensions or, for that matter, in OSHA, to keep people alive. And you have all of these tools to do that.

And I think that is why the problem has grown up over a period of time, because Congress gives us a statute, and we try to go out and enforce it, try to go out and carry it through, and then you have, as you say, as has been raised here, and then you have all these different people doing what might be better done in a coordinated way or a single unit. Why don't we have a criminal enforcement arm only?

Well, because that is not the way the problems are presented to us, nor am I certain that it would achieve clean unions, protected pensions, safer work places. I do not know that that is how we would do it, but I think that is a legitimate question.

Mr. SOUDER. I want to make a brief comment, and I will yield back. I think that your point is well taken, and the reason that we tend, when we hear an IG report, to look at that type of thing is that in addition to we should never forget the primary purpose of why different things are there and what your goal is, is that it does

not take very long around here—I am a freshman, but I was a staffer for 10 years.

And this is one of the only committees in the reform/oversight function where we actually get to look at a unified way at a problem because much of the reason we have different statutes and laws is because of subcommittee jurisdictions in Congress, either in the House or Senate, that passed, and nobody wants to let their little piece go.

When we just went through the jobs bill, the so-called careers act in the Education and Economic Committee, I mean, the training and education overlaps between the different departments. Or when we have had our oversight hearings here on the Labor Department, and it is very difficult for people in the Labor Department to figure out what you report to whom on, let alone a business trying to do that. And a lot of it really arises out of the way Congress initially goes at a problem.

I am more familiar with the drug issue, where the fact is we have not been able to get coordinated for a long time, not because there are merits to being uncoordinated but because different agencies have different bureaucracies that have developed around it, Congress has different jurisdictions, and it is very difficult.

Nevertheless, I remain receptive to the general argument that just centralizing does not make something more efficient, too. Just you want organized chaos rather than just chaos, and I think that is what we are trying to get to in this; and, with that, I yield back.

Mr. SHAYS. Before I recognize Mr. Green, I would say that I think this committee can play a very important role sorting out what the inspector general suggested and your responses and weighing down one way or the other. My staff is going to be following up, and I am going to be present at some of the dialog and any other committee member that wants to be, to go through each of those 12 recommendations. We will hear the best argument of the IG and then hear the best responses of you all, and then come down one way or the other based on what we hear.

I would like you all to think of that as an opportunity to present your case to us as a referee in this debate. With this, Mr. Green, I call on you.

Mr. GREEN. Mr. Chairman, what 12 recommendations are you talking about?

Mr. SHAYS. What we are talking about is that the IG has basically spent about 10 years plus—excuse me—various groups looking at how we should be going after labor racketeering.

Mr. GREEN. The 1986 report.

Mr. SHAYS. No, but the report that we are referring to is the—and I will just give it to you—it is the final status report, and you were out of the committee when I brought this up, the final status report on efforts to improve the Department Criminal Enforcement Programs.

Mr. GREEN. OK. February 14.

Mr. SHAYS. The March 24 recommendations of last year and then the response by the Department of Labor on February 14 of this year. Some of the responses left me wanting; but, frankly, some of the recommendations, I have some question with as well. I was not happy that we could not get into more detail with the inspector

general since he did not seem to be too aware of the Department's response. So maybe we tried to do too much in 1 day. You have the floor.

Mr. GREEN. OK. Thank you, Mr. Chairman. I was thinking about the 1986 report, and one of my questions—and I have a number of them—was one in 1986, Mr. McAteer, I know there was a number of recommendations to the Attorney General that were made by that committee in your testimony. And there was only a few of them that I guess was considered; but I was wondering why over the last 10 years, for example, the 1986 report came out and there were so few recommended—the "President's Commission on Organized Crime"—there were 34 administrative and legislative recommendations, and how many were adopted under the Reagan Labor Department? Do we have any information? I did not see that in any of the testimony.

Mr. MCATEER. Mr. Green, the 1986 report led to the establishment of the 1987 committee under the then-Assistant Attorney General William Weld, upon which committee served the inspector general, an individual from the FBI, as well as the Solicitor of Labor.

And they deliberated for quite a lengthy period of time, almost a year; and with regard to the legislative proposals, they forwarded them, in essence, to the Congress and said, "Here are the legislative proposals of the Commission."

Mr. GREEN. We had 34 administrative ones that could be dealt with, I guess, in house.

Mr. MCATEER. It is hard to characterize a number because the majority of them were not accepted, but parts of one were picked up and parts of some were simply rejected. For example, they suggest that RICO be used with regard to organized crime. That suggestion has been followed through on. That is a general suggestion, and that has been followed through over 10 years, 11 years now; but, for the most part, they did not adopt these suggestions.

Mr. GREEN. Did this carry forward not only from the Reagan Department of Labor to the Bush Department of Labor?

Mr. MCATEER. It is quite interesting. I mean, the three administrations have had access to that but have not adopted these recommendations.

Mr. GREEN. I notice in Mr. Kotch's testimony on page 8, though, that in 1994 the Department of Labor made changes in its labor organization annual report that was part of that President's Commission. So 8 years later we are still looking at that original 1986 "President's Commission on Organized Crime" report and making some changes, getting into the Clinton Labor Department.

Mr. MCATEER. Right. And the data changes that they suggest, the increased use of computers, etc., that has been adopted in this administration. So part of those recommendations have been adopted in this administration as well.

Mr. GREEN. Mr. Kotch, since 1989, three of the four international unions that were identified in the "President's Commission on Organized Crime," the 1986 report, they have entered into agreements or voluntary agreements with the government to eliminate corruption. And both the Teamsters and the Laborers International have elections pending. I do not know the exact dates, but I believe

it is this year for the Teamsters; I do not know when for the Laborers.

Do you think that if we would have gotten a RICO conviction, that it would have had the same results as what has happened, at least the agreement so far with the Laborers and the Teamsters?

Mr. KOTCH. I think the results would have been similar, although I think Mr. Keeney could address that a little better.

Mr. GREEN. Mr. Lebowitz, let me ask you a couple of questions about—and, again, this is not just on unions because last year I happened to serve on the Subcommittee of then Education and Labor Employee and Employer Management, the relations that had jurisdiction over pension, and we heard 2 years ago and last year the emerging racketeering issue with the PWBA and assumed greater criminal enforcement responsibilities concerning pension employee benefit plans, pension racketeering.

And, again, our earlier panel said that you can have it both with union officials but also with CEO's, I guess, doing the same thing. And what additional emphasis should PWBA apply to its current efforts to protect its pension plans?

Mr. LEBOWITZ. Congressman, we take our cases, the investigations wherever they lead, and many of our cases start with a simple complaint, a telephone call or a letter, and as we get into it, it may indicate that there is a more serious problem. If that problem looks to be, to the investigator and to the regional director, to be of a criminal nature, then we will go to the U.S. attorney's office and discuss it with them and proceed as they direct.

We are very sensitive to criminal matters, and we will follow up, as I said, wherever the facts lead us. Over the years, we have increased the proportion of time that our investigators spend on criminal investigations not because we have directed it, but because our agency is essentially a highly decentralized one, and each regional office is free to establish their own investigative priorities.

Each regional director has, as a critical responsibility, responsibility for establishing effective interaction with other law enforcement agencies, including the FBI, the Justice Department, the Postal Service, the Internal Revenue Service, and State and local prosecutors.

I think there is a high degree of awareness and sensitivity of the abuse potential. There is so much money involved in the pension plans and the employee benefit plans in general, and we have established strong criminal enforcement as an agency priority.

Mr. GREEN. I know—and this came up in our earlier panel—your enforcement and compliance budget is scheduled to be reduced $16 million if the labor appropriations bill passes today, I know, Mr. Kotch, you have actually lost about a fourth of your FTE's over the last 10 years, and yet the diagram that you provide us or the chart shows that you have been able to continue with, it looks like, a fairly good relationship of convictions to indictments, although your criminal cases have actually gone down. But you received the same number of indictments in 1995 as you did in 1985, and the convictions were even more in 1995 as compared to 1985.

I guess what I want to know is, in your case, a $16 million loss, if we are going to see an expanded effort for theft of pension funds,

do you think your department is going to be able to do more with less people?

Mr. LEBOWITZ. I would certainly subscribe to Mr. Masten's point earlier this morning that at some point you end up doing less with less. We have all, each of us and every responsible official in every agency in government, have looked very carefully at how we do business and try to find ways to be more effective.

But at some point it is simply not enough to carry out the program to the extent that we would like to. The budget that the President requested for fiscal year 1997 included for us increases in our enforcement budget which are directly tied to our investigative program related to fraud involving 401(k) plans, which, as I am sure you know, are extremely popular now. There are more than 200,000 such plans, with 25 million participants. An enormous amount of money is flowing through these plans, and there is a good deal of attention that needs to be paid. We get a substantial number of complaints.

Another key element of the budget request was to develop a new data processing system so the million annual reports that contain very important information which is used largely to funnel information for our computer targeting efforts and for policy analysis in the employee-benefit field can be streamlined, where employers and plans can file these reports electronically, and we can get away from the incredibly burdensome and costly paper-bound process that we have right now. These initiatives were not funded in the House Appropriations Committee action.

Mr. GREEN. OK. So, again, by your being here today, we are going to want you to be more aggressive, and yet we are going to take $16 million from you to do it and not give you the updated tools to do it.

Mr. Chairman, we might want to check and see if we could do an amendment to their bill, too, to their section because, I think, with the increased concern—I am glad we had this committee hearing because, again, this all interrelates.

Mr. SHAYS. Let me just respond to the gentleman. One of the things that we will be doing in this report is trying to get a determination of the return on our investment, in other words, our Government expenditures. And so we are going to have to stick our noses into the issue of what kind of money we are providing. I have never—and I have been in public life 22 years—criticized a Department for something when we, in the legislative body, have not provided the resources they need to do what they do. In other words, if we have not provided resources, then we cannot criticize you for not doing your job adequately.

I want to take the first two recommendations of the IG. The first is, the Department of Labor should identify the minimum essential elements of adequate case documentation and assure that each Department of Labor enforcement agency maintains these minimal essential elements. And the second one is, DOL should ensure the conformance of basic common data elements within agency enforcement record systems.

Now, what is interesting is, in the back of the response of the Department of Labor, February 14, there was a comment that says

the key fact is, each recommendation is at least 5 years old. So this is not any new invention of the IG.

There are no new recommendations in the March 1995 final status report. Each of the 12 recommendations made in the March 1995 report were made earlier by the Secretary's Task Force on Enforcement 91890, recommendations 1, 2, 6, 7, 8, 10, 11, and 12; the IG Special Purpose Review of Criminal Enforcement 1990, recommendations 3, 4, and 9; Department of Labor commitments made in the Federal Management Financial Integrity Act reports for 1990, 1991, 1992, and 1993, recommendations 3, 4, 5, 7, and 9.

What that says to me is nobody is reinventing the wheel; they feel pretty determined that they should happen. The Department is trying to say, and readily concede, that other administrations had an opportunity to respond and did not, so we still have the recommendations, that is conceded and accepted from both parties.

Let us just take one and two, and we can call it a day. Just taking the first one, what is unreasonable about that request?

Mr. MCATEER. Mr. Chairman.

Mr. SHAYS. I am going to ask the others to respond.

Mr. MCATEER. OK.

Mr. SHAYS. I get the sense from reading the IG's report, and particularly the Department of Labor's response, that there is not a lot of communication between you, Mr. Kotch, and Mr. Lebowitz, that somehow you have your own sphere of influence and activity. Maybe you can tell me how you do interact with each other. Do you want to start, Mr. McAteer?

Mr. MCATEER. Yes; I am sorry. I thought that——

Mr. SHAYS. And I want the other two to respond, but I am going to have you respond to start.

Mr. MCATEER. That is fine. I think that there is nothing unreasonable. Mr. Glynn's report of February 14, says that the agencies report that they have implemented this recommendation.

Mr. SHAYS. Yes, but you need to keep reading, because then they say in the last paragraph, "The agencies are of the view that because of their activity on this subject matter, it is not necessary for DOL to develop uniform, minimum essential elements of case documentation for agencywide application. Indeed, the agency notes that this conclusion is buttressed by the OIG's report, which does not state that the criminal investigative work of DOL's enforcement agency is lacking in adequate case documentation."

Then they say that they also note that because of statutory and program differences, it would be difficult, time consuming, and costly.

Mr. KOTCH. Sir, if I could just give——

Mr. SHAYS. Sure.

Mr. KOTCH [continuing]. The OLMS perspective on that. Each statute and each part of every statute have different elements of proof to prove a particular crime. When we go forth to the U.S. attorney with our reports of investigation, we have to address adequately each of those elements of proof. We would not have 1,800 indictments in 10 years, of course, if we had not documented the violations properly. So, in the OLMS perspective, we have been doing just that for 15 years.

Mr. SHAYS. You have different parts, but then the question is, Where do you have similarities, both in criminal and civil?

Mr. KOTCH. Much of our civil work is unique to us: the elections, member election complaints, have to file financial reports with us which we provide to the public and other law enforcement agencies. Our criminal work, much of it is discovered by us through a number of sources: complaints, our compliance audits, usually the financial reports that are filed. There are occasions when some of our criminal work leads, as Alan has described, to a bigger case situation, and U.S. attorneys put together investigative teams from the IG, from us, from Pension, from the IRS, whoever; but much of our work is unique to us.

There is a part of it that then crosses into the more, you could call, racketeering area; and in those situations we often work jointly with the FBI or the IG.

Mr. SHAYS. Mr. Lebowitz.

Mr. LEBOWITZ. I would agree with Mr. Kotch. We have always paid attention to the appropriate case documentation, and I think the IG concluded that we actually did a good job in that respect. Our statute is very complicated and very different from the LMRDA. It is very different from the OSHA statutes and the mine safety statutes and the wage-and-hour statutes.

So, just by definition, the types of documentation that would go into a typical ERISA investigative case file, civil or criminal, would obviously be a function of those unique aspects of the statutes. I guess that is the best way I can respond to it. I do not know that there really are all that many common elements among these very different statutes.

Mr. SHAYS. If that is true, it is amazing that these recommendations keep being kicked around here and keep showing up. Many different administrations have not seemed to act enthusiastically on the recommendations. They keep showing up as the Department of Labor acknowledges, and so we have to determine how much is a turf issue and how much is simply that the data is not as common as the IG may think it is.

And if nothing else in this hearing, if we could finally put an end to recommendations that should not be there and get some acceptance of the others.

How about on the second one? Is the argument that DOL shall ensure the conformance of basic common data within enforcement records? It would seem to me that data should not be too difficult.

Mr. MCATEER. Would you like me to begin?

Mr. SHAYS. Any one of you.

Mr. MCATEER. I have the book.

Mr. SHAYS. I am happy someone had the book.

Mr. MCATEER. To try to take a look at it from the standpoint of each agency, each agency has its data responsibilities in the sense that the statute says you are supposed to do this, and then you decide what numbers you are going to keep. I do not think there is a prohibition against common data elements, but I think in some instances you have a hard time comparing apples and oranges.

Mr. SHAYS. It may be that we need to look at the statutes.

Mr. MCATEER. Certainly.

Mr. SHAYS. If I could just interrupt, Mr. Souder's point that sometimes different subcommittees and different committees have their own interests and they focus in without a sense of coordinating benefits.

Mr. MCATEER. And, you know, if the pension data is compared to the OSHA data, for example, you know, OSHA keeps accident numbers. Well, you would not have accident numbers under PWBA, and you would not have financial numbers under OSHA. So you would be making comparisons of two different universes. And I think that what has happened is that you have evolved over a period of time, but I will admit to you that these are not new ideas.

These are recommendations that have come up over the years, and, you know, in terms of criminal enforcement, again, what is the purpose to be served by collecting the data? Because all of us, both on the Hill and in the executive branch, realize that we just do not want to collect numbers for the sake of collecting numbers, but we want to collect numbers and collect information for the sake of doing a better job and a more efficient job.

Mr. SHAYS. That is fairly reasonable, but the bottom line is if we could have some uniformity, I think there could be some value. Did either of you want——

Mr. LEBOWITZ. I think, intuitively, it would seem to make sense. It would seem logical that some common enforcement data base would be useful to all the enforcement agencies, and I think that is probably right. But inherent in that is a judgment that violators of the OSHA statutes are more likely to be violators of ERISA or the Landrim Griffin, and there is no predicate to that effect. There have been some studies, I think, over the years, certainly since these recommendations have been made, to try to see if that is true or not, what you would sort of intuitively believe is true. And I do not know that there is any objective evidence to sustain it.

The other point I would make is personally I would like to have a data base, a computer-based system where our investigators could go in, if they are going to be undertaking the investigation of a corporate pension plan, to see whether that company has been involved in wage-and-hour violations or other violations.

And if that could be done in a cost-effective way, and I think that is, in a sense, what the Department's response to this recommendation has been, that it has not been viewed as being feasible, either technologically or from a cost basis, to develop a system of this sort. The one thing I have learned over the years in this job is that no system development project is easy, and anything that sounds simple is more likely to be incredibly complicated and costly.

We are going to have to maintain the information that we need for our program. This would be in addition to that, so it is an additional system, and I think basically the conclusion was that the cost was not justified by any kind of empirical data that would support its use.

Mr. SHAYS. I do not see any of the members here. I am going to call this hearing to a close. Isn't it interesting how many people made statements in the beginning who are not here now? Let me just ask you, Are there any of you here who want to make a final comment, a recommendation to the committee?

Mr. MCATEER. We thank you for inviting us and thank you for your interest. We would like very much to work with you and are prepared to work with you to try to improve our efficiency.

Mr. SHAYS. Well, Mr. McAteer, I believe that; and let me say that we have had tremendous cooperation from our minority staff, Cheryl Phelps, and Doris Jacobs, who is on the majority staff who has put this hearing together. I am going to ask both of them to sit down with the IG and with the Department of Labor. I would like, given that you have had a response, to have that updated. And please recommend to the committee what areas you would like us to focus in on in terms of our report. It can be a funding issue. It can be a statutory change. It can be a recommendation to the IG that they back off some of their recommendations.

I really think that collectively the three different units here—the Department of Labor, the IG, and our committee, the majority and minority, could come in with a helpful resolution to this longstanding debate so that when I am President, I will know that it is all taken care of. Right? You know, I only said that because there is no one here on either side to object.

Let me say this to you. I appreciate all of you being here. And, with that, we would also like to thank Larry Halloran, who is the manager of this full committee, and never gets enough credit unless he is getting a lot of blame, but he deserves a lot of credit. And, also, Donna Ferguson, who has been able to follow all of this today, thank you. I call the hearing to a close.

[Whereupon, at 2:20 p.m., the subcommittee was adjourned.]

[The background material referred to can be found in subcommittee files. A list follows:]

Background Material

IX. ~~Briefing Memorandum~~,

Attachment 1: "The Edge: Organized Crime, Business and Labor Unions," President's Commission on Organized Crime, Report to the President and the Attorney General, 1985.

Attachment 2: Semiannual Report to the Congress, Department of Labor Office of Inspector General, October 1, 1995 - March 31, 1996.

Attachment 3: Office of Labor-Management Standards, U.S. Department of Labor, 1996 Organization Chart.

Attachment 4: U.S. Department of Labor, FTE Actuals - FY 1985 - FY 1995 [along with] # Of On-Board Employment As Of 5/25/96 for OLMS, PWBA and SOL. Prepared for HRIR on 6/26/96.

Attachment 5: Selected Department of Labor Agencies (OLMS, PWBA and SOL) -- Budget Authority-FY 1985 to FY 1997. Prepared for HRIR on 6/28/96.

Attachment 6: Pension and Welfare Benefits Administration, U.S. Department of Labor, 1994 Organization Chart.

Attachment 7: Solicitor of Labor, U.S. Department of Labor, 1996 Organization Chart.

X. Memorandum from Deputy Secretary of Labor to Inspector General Charles C. Masten, "Final Status Report on Efforts to Improve Departmental Criminal Enforcement Programs, Report No. 17-95-005-50-598," February 14, 1996.

○